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Contents

Federal Register

Vol. 69, No. 196

Tuesday, October 12, 2004

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7827.....60789
7828.....60793

7 CFR
301.....60537
1730.....60537
Proposed Rules:
304.....60567

9 CFR
52.....60542

10 CFR
Proposed Rules:
110.....60567

12 CFR
204.....60543

14 CFR
Proposed Rules:
39.....60568

15 CFR
730.....60545
734.....60545
746.....60545
770.....60545
772.....60545
774.....60545
Proposed Rules:
904.....60569

21 CFR
520.....60547
558.....60547

32 CFR
199.....60547

33 CFR
117.....60555
Proposed Rules:
110.....60592
117 (2 documents) 60595, 60597
165.....60600

40 CFR
261.....60557

45 CFR
Proposed Rules:
Ch. XXV.....60603

47 CFR
73 (2 documents) 60560, 60561
90.....60561
Proposed Rules:
73 (2 documents) 60604, 60605

49 CFR
1.....60562
571.....60563

50 CFR
648.....60565
679.....60566
Proposed Rules:
17 (2 documents) 60605, 60706

Rules and Regulations

Federal Register
Vol. 69, No. 196
Tuesday, October 12, 2004

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04–032–2]

Japanese Beetle; Domestic Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Japanese beetle regulations to add the State of Arkansas to the list of quarantined States. The interim rule was necessary to prevent the artificial spread of Japanese beetle into noninfested areas of the United States.

DATES: The interim rule became effective on July 6, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. S. Anwar Rizvi, Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4313.

SUPPLEMENTARY INFORMATION:

Background

The Japanese beetle (*Popillia japonica*) feeds on fruits, vegetables, and ornamental plants and is capable of causing damage to over 300 potential hosts. The Japanese beetle quarantine and regulations, contained in 7 CFR 301.48 through 301.48–8 (referred to below as the regulations), quarantine the States of Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia and restrict the interstate movement of aircraft from regulated airports in these States in order to prevent the artificial spread of the Japanese beetle to noninfested States where the beetle could become established (referred to below as protected States). The list of quarantined States, as well as the list of protected States, can be found in § 301.48.

In an interim rule effective and published in the **Federal Register** on July 6, 2004 (69 FR 40533–40534, Docket No. 04–032–1), we amended the Japanese beetle regulations by adding Arkansas to the list of quarantined States in § 301.48.

Comments on the interim rule were required to be received on or before September 7, 2004. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 69 FR 40533–40534 on July 6, 2004.

Done in Washington, DC, this 5th day of October 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–22791 Filed 10–8–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1730

RIN 0572–AB92

Electric System Emergency Restoration Plan

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture's Rural Development Utilities Programs, is amending its regulations on Electric System Operations and Maintenance to require electric program distribution, generation and transmission borrowers to expand a currently established Emergency Restoration Plan (ERP), or, if no ERP is currently established, to create an ERP. The ERP shall detail how the borrower will restore its system in the event of a system-wide outage resulting from a major natural or manmade disaster or other causes. The ERP shall include preventative measures and procedures for emergency recovery from physical and cyber attacks to the borrower's electric systems and core businesses, and shall also address Homeland Security concerns. This additional requirement is not entirely new to borrowers as RUS has recommended similar ''plans'' in the past. RUS Bulletin 1730–1, ''Electric System Operation and Maintenance (O&M),'' provides language addressing the security of RUS borrowers' electric systems.

DATES: This rule is effective October 12, 2004. Borrowers of RUS loan funds will have until July 12, 2005 to certify that they have performed a Vulnerability and Risk Assessment, and January 12, 2006 to certify that they have an ERP. The completion of the first Exercise of the ERP must occur on or before January 12, 2007.

FOR FURTHER INFORMATION CONTACT: John B. Pavek, Chief, Distribution Branch, Rural Utilities Service, Electric Program, Room 1256 South Building, Stop 1569, 1400 Independence Ave., SW., Washington, DC 20250–1569, Telephone: 202–720–5082, Fax: 202–720–7491, E-mail: *John.Pavek@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule-related notice titled ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034) advising that rural electrification loans and loan guarantees are excluded from the scope of Executive Order 12372.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this final rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912 (e)), administrative appeals procedures, if any are required, must be exhausted before an action against the Department or its agencies may be initiated.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with states is not required.

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since RUS is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of final rulemaking with respect to the subject matter of this rule.

Information Collection and Bookkeeping Requirements

In accordance with Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB). These requirements have been approved by emergency clearance under OMB Control Number 0572–0140.

Comments on this notice must be received by December 13, 2004.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology.

Comments may be sent to: Dawn Wolfgang, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 5166–South, STOP 1522, Washington, DC 20250–1522. Fax: (202) 720–4120. E-mail: *dawn.wolfgang@usda.gov.*

Title: Electric System Emergency Restoration Plan.

OMB Control Number: 0572–0140.

Type of Request: Request for approval of a currently approved information collection.

Abstract: Electric power systems have been identified in Presidential Decision Directive 63 (PDD–63), May 1998, as one of the critical infrastructures of the United States. The term ''critical infrastructure'' is defined in section 1016(e) of the USA Patriot Act of 2001 (42 U.S.C. 5195c(e)) as ''systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.'' Damage to or loss of critical or significant parts of the U.S. electric power system can cause enormous damage to the environment, loss of life and economic loss and can affect the national security of the United States. Such damage or loss can be caused by acts of nature or human acts, ranging from an accident to an act of terrorism. Of particular concern are physical and cyber threats from terrorists. Protecting America's critical infrastructure is the shared responsibility of Federal, State, and local government in active partnership with the private sector. Homeland Security Presidential Directive 7 (HSPD–7), December 2003, established a national policy for Federal departments and agencies to identify and prioritize United States critical infrastructure and key resources and to protect them from terrorist attacks. America's open and technologically complex society includes a wide array of critical infrastructure and key resources that are potential terrorist targets. The majority of these are owned and operated by the private sector and State or local governments. These critical infrastructures and key resources are both physical and cyber-based and span all sectors of the economy. A substantial portion of the electric infrastructure of the United States resides in, and is maintained by, rural America. To ensure that the electric infrastructure in rural America is adequately protected, RUS is instituting the requirement that all current electric borrowers enhance an existing ERP or, if none exists, develop and maintain an ERP.

Title 7 CFR Part 1730, Electric System and Maintenance, establishes a requirement for electric program distribution, generation, and transmission borrowers to develop an ERP or expand an existing ERP and to provide RUS with a written certification that they have an ERP based upon a VRA.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Not for profit.

Estimated Number of Respondents: 676.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 338 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, Rural Utilities Service at (202) 720–0812.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Unfunded Mandates

This final rule contains no Federal mandates under the regulatory provision of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. Chapter 25) pursuant to exceptions therein for State, local, and tribal governments or the private sector.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this final rule will not significantly affect the quality of the

human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512-1800.

Background

The term ''critical infrastructure'' is defined in section 1016(e) of the USA Patriot Act of 2001 (42 U.S.C. 5195c(e)) as ''systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.'' Electric power systems have been identified in Presidential Decision Directive 63 (PDD–63), May 1998, as one of the critical infrastructures of the United States.

The United States electric power system (electric power system) consists of three distinct components: Generation facilities, transmission facilities (including bulk transmission and subtransmission facilities) and distribution facilities. Specific definitions of generation, transmission and distribution facilities are located in 7 CFR 1710.2. The other critical infrastructures identified in PDD–63 are all dependant to some degree upon the full and continuous functioning of the electric power system. Damage to or loss of critical or significant parts of the electric power system can cause enormous damage to the environment, loss of life and economic loss and can affect the national security of the United States. Such damage or loss to the electric power system can be caused by acts of nature or human acts, ranging from an accident to an act of terrorism. Of particular concern are physical and cyber threats from terrorists.

RUS borrowers have always had a duty to RUS to maintain their respective systems. In performing this duty, a borrower furthers the purposes of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) while also preserving the value of its system to serve as collateral for repayment of RUS assistance. Generally speaking, the scope of this duty is frequently measured against prudent utility practices. Thus, it is entirely appropriate for RUS to expect that its borrowers will be aware of and following developing standards for private sector emergency preparedness and business continuity. A voluntary standard is emerging within the private sector and the requirements of this final rule are consistent with that standard. The latest evidence of the emerging standards in this area may be found on page 398 of the *Final Report of the National Commission on Terrorist Attacks upon the United States* (the ''Commission'') issued on July 22, 2004 (the ''9/11 Report'').

The 9/11 Report notes that the Commission asked the American National Standards Institute (''ANSI'') to develop a consensus on a ''National Standard of Preparedness'' for the private sector. As a result of public sessions, ANSI recommended that the Commission endorse a voluntary National Preparedness Standard based on the existing American National Standard on Disaster/Emergency Management and Business Continuity Programs (''NFPA 1600''). The Commission has done so and it has also explicitly encouraged the insurance and credit rating industries to look closely at a company's compliance with the ANSI standard in assessing its insurability and creditworthiness. The Commission wrote: ''We believe that compliance with the standard should define the standard of care owed by a company to its employees and the public for legal purposes.''

The RUS purpose in referring to these recent developments is not to suggest that RUS borrowers must comply with NFPA 1600. However, RUS does wish to call attention to the fact that this final rule is being issued at a time when there appears to be a widespread recognition that emergency preparedness and business continuity is ''a cost of doing business in the post-9/11 world,'' and thus properly the concern of the rural utility sector and of RUS as a major provider of financing to this sector.

A substantial portion of the electric infrastructure of the United States is located, and maintained by, rural America. To ensure that the electric infrastructure in rural America is adequately protected, and that security for RUS electric loans is adequately maintained and protected, RUS is instituting the requirement that all current electric borrowers conduct a Vulnerability and Risk Assessment (VRA) of their respective systems and utilize the results of this assessment to enhance an existing ERP or, if none exists, develop and maintain an ERP. Prior to approving any new RUS electric program grant, loan or loan guarantee, applicants will have to demonstrate that they have an ERP.

The VRA is utilized to identify specific assets and infrastructure owned or served by the electric utility, determine the criticality and risk level associated with such assets and infrastructure including a risk versus cost analysis, identify threats and vulnerabilities, if any, review existing mitigation procedures, and assist in the development of new and additional mitigation procedures, if necessary. The ERP will provide written procedures detailing response and restoration efforts in the event of a major system outage resulting from a natural or man made disaster. An annual Exercise of the ERP will ensure operability and employee competency and serve to identify and correct deficiencies in the existing ERP. This final rule defines ''Exercise'' to mean a borrower or borrowers' participation in a tabletop execution of, or actual implementation of, the ERP to verify the operability of the ERP. The Exercise may be implemented singly by an individual borrower, or by an individual borrower as a participant in a multi-party (to include utilities, government agencies and other participants or combination thereof) tabletop execution or actual implementation of the ERP. This final rule defines ''Tabletop'' to mean a hypothetical emergency response scenario in which participants will identify the policy, communication, resources, data, coordination, and organizational elements associated with an emergency response. The Exercise must, at a minimum, verify:

1. Operability of alert and notification systems;
2. Efficacy of plan;
3. Employee competency with ERP procedures;
4. Points of contact (POC) of key personnel, both internally and externally; and
5. Contact numbers for POCs.

On March 19, 2004, RUS published a proposed rule in the **Federal Register**, at 69 FR 12989, which proposed to require electric program distribution, generation and transmission borrowers to expand a currently established ERP, or if no ERP is currently established, to create an ERP in accordance with 7 CFR part 1730.

RUS received 13 letters and one e-mail on this proposed rule by the comment deadline of May 3, 2004. Comments were received from Enervision, Inc., Gascosage Electric

Cooperative, North Dakota Association of Rural Electric Cooperatives, the National Rural Electric Cooperative Association, Wheller, Van Sickle & Associates, S.C. on behalf of Dairyland Power, Alabama Rural Electric Association of Cooperatives, Association of Electric Cooperatives of Virginia, Maryland and Delaware, Arkansas Electric Cooperative Corporation, Sunflower Electric Power Corporation, South Dakota Rural Electric Cooperative Association, Carroll Electric Membership Corporation, Great River Energy, Tri-State Generation & Transmission Association, Inc. and the Electric Cooperatives of South Carolina, Inc. Ninety three percent of the respondents supported the revision to 7 CFR part 1730, which requires electric program distribution, generation and transmission borrowers to establish and annually exercise an ERP.

One respondent did not support the proposed rule. The basis for its opposition was that, due to the small size of the utility, recordkeeping would strain the existing workforce. The respondent stated that it has already established an Emergency and Disaster Plan that effectively details guidelines for restoring its system should a disaster occur, provides preventative measures to preclude such an event and incorporates Homeland Security issues.

RUS believes that, like the respondent above, most utilities already have a similar plan in place, commonly referred to as a storm plan, and that the final rule will only require a modification of such plans. Borrowers will only have to modify their existing plan to add those items identified in § 1730.28 that they have not already incorporated. There is not a significant amount of additional recordkeeping required. Section 1730.22, ''Borrower Analysis'' details the requirements for records of inspection which includes RUS Form 300, ''Review Rating Summary,'' on which a borrower indicates that it has an ERP. The self-certification of completion of a VRA and ERP can be completed in simple letter form as outlined in § 1730.26(b) of the final rule. This self-certification letter will be the only document submitted to and maintained by RUS with respect to the VRA and ERP.

While the overall comments received from the remainder of the respondents were generally favorable, there were requests for additional clarification on the following items:

1. Timeframe for implementation.

2. Criteria for identification of critical assets (utility critical and National critical).

3. Requirements for self-certification.

4. Can borrowers collectively develop an ERP and exercise such ERP jointly?

Additionally, there were a few specific questions regarding RUS' relationship with the North American Electric Reliability Council (NERC) and any possible contradiction to NERC requirements or other agencies that have a certain degree of responsibility in the electric sector such as the Nuclear Regulatory Commission (NRC). There were additional suggested requests that involved items to be included in a guide bulletin to assist RUS borrowers to comply with the proposed regulation.

RUS provided the clarifications requested on the timeframe for implementation and, as requested, extended the timeframe to complete a VRA. RUS also provided explicit language regarding the basis for identification of critical assets or infrastructure identified as elements of national security, provided detailed instructions for self-certification, and acknowledges that the ERP may be developed jointly by electric utilities. Further, RUS acknowledges that the annual exercise of an ERP may be conducted by a borrower as a participant in a multi-party exercise. RUS agrees with the comments regarding the creation of a guide bulletin which shall include a discussion of RUS' relationship with NERC. A guide bulletin is being developed by RUS and will be made available to electric borrowers to assist in implementing the requirements of the final rule. Nothing in this final rule supercedes any requirements imposed or dictated by the Nuclear Regulatory Commission (NRC).

List of Subjects in 7 CFR Part 1730

Electric power, Loan programs—energy, Reporting and recordkeeping requirement, Rural areas.

■ For the reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations, part 1730, is amended to read follows:

PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE

■ 1. The authority citation for part 1730 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart B—Operations and Maintenance Requirements

■ 2. Section 1730.20 is revised to read as follows:

§ 1730.20 General.

Each electric program distribution, transmission and generation borrower (as defined in § 1710.2) shall operate and maintain its system in compliance with prudent utility practice, in compliance with its loan documents, and in compliance with all applicable laws, regulations and orders, shall maintain its systems in good repair, working order and condition, and shall make all needed repairs, renewals, replacements, alterations, additions, betterments and improvements, in accordance with applicable provisions of the borrower's security instrument. Each borrower is responsible for on-going operations and maintenance programs, individually or regionally performing a system security Vulnerability and Risk Assessment (VRA), establishing and maintaining an Emergency Restoration Plan (ERP), maintaining records of the physical, cyber and electrical condition and security of its electric system and for the quality of services provided to its customers. The borrower is also responsible for all necessary inspections and tests of the component parts of its system, and for maintaining records of such inspections and tests. Each borrower shall budget sufficient resources to operate and maintain its system and annually exercise its ERP in accordance with the requirements of this part. An actual manmade or natural event on the borrowers system in which a borrower utilizes a significant portion of its ERP shall count as an annual exercise for that calendar year, provided that after conclusion of the event, the borrower verifies accuracy of the emergency points-of-contact (POC) and the associated contact numbers as listed in their ERP. For portions of the borrower's system that are not operated by the borrower, if any, the borrower is responsible for ensuring that the operator is operating and maintaining the system properly in accordance with the operating agreement.

■ 3. Section 1730.21 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1730.21 Inspections and tests.

(a) Each borrower shall conduct all necessary inspections and tests of the component parts of its electric system, annually exercise its ERP, and maintain records of such inspections and tests. For the purpose of this part, ''Exercise'' means a borrower's Tabletop execution of, or actual implementation of, the ERP to verify the operability of the ERP. Such Exercise may be performed singly by an individual borrower, or as an active participant in a multi-party (to include utilities, government agencies and other participants or combination thereof) Tabletop execution or actual

full implementation of the ERP. For the purpose of this part, ''Tabletop'' means a hypothetical emergency response scenario in which participants will identify the policy, communication, resources, data, coordination, and organizational elements associated with an emergency response.

* * * * *

(c) Inspections of facilities must include a determination of whether the facility complies with the National Electrical Safety Code, National Electrical Code (as applicable), and applicable State or local regulations and whether additional security measures are considered necessary to reduce the vulnerability of those facilities which, if damaged or destroyed, would severely impact the reliability and security of the electric power grid, cause significant risk to the safety and health of the public and/or impact the ability to provide service to consumers over an extended period of time. The electric power grid, also known as the transmission grid, consists of a network of electrical lines and related facilities, including certain substations, used to connect distribution facilities to generation facilities, and includes bulk transmission and subtransmission facilities as defined in § 1710.2 of this title. Any serious or life-threatening deficiencies shall be promptly repaired, disconnected, or isolated in accordance with applicable codes or regulations. Any other deficiencies found as a result of such inspections and tests are to be recorded and those records are to be maintained until such deficiencies are corrected or for the retention period required by paragraph (b) of this section, whichever is longer.

■ 4. Section 1730.22 is amended by revising paragraph (a) and paragraph (b) introductory text to read as follow:

§ 1730.22 Borrower analysis.

(a) Each borrower shall periodically analyze and document its security, operations and maintenance policies, practices, and procedures to determine if they are appropriate and if they are being followed. The records of inspections and tests are also to be reviewed and analyzed to identify any trends which could indicate deterioration in the physical or cyber condition or the operational effectiveness of the system or suggest a need for changes in security, operations or maintenance policies, practices and procedures. For portions of the borrower's system that are not operated by the borrower, if any, the borrower's written analysis would also include a review of the operator's performance under the operating agreement.

(b) When a borrower's security, operations and maintenance policies, practices, and procedures are to be reviewed and evaluated by RUS, the borrower shall:

* * * * *

■ 5. Section 1730.26 is amended by:
■ A. Revising the section heading;
■ B. Designating the text as paragraph (a) and adding a paragraph heading; and
■ C. Adding a new paragraph (b).

These additions are to read as follows:

§ 1730.26 Certification.

(a) *Engineer's certification.* * * *

(b) *Emergency Restoration Plan certification.* The borrower's Manager or Chief Executive Officer shall provide written certification to RUS stating that a VRA has been satisfactorily completed that meets the criteria of § 1730.27 (a), (b), (c), or (d), as applicable and § 1730.27(e)(1) through (e)(8), and that the borrower has an ERP that meets the criteria of § 1730.28 (a), (b), (c), or (d), as applicable, and § 1730.28 (e), (f), and (g). The written certification shall be in letter form. Applicants for new RUS electric loans, loan guarantees or grants shall include the written certification in the application package submitted to RUS. If the self-certification of an ERP and VRA are not received as set forth in this section, approval of the loan, loan guarantees or grants will not be considered until the certifications are received by RUS.

■ 5. Sections 1730.27, 1730.28 and 1730.29 are added to read as follows:

§ 1730.27 Vulnerability and Risk Assessment (VRA).

(a) Each borrower with an approved RUS electric program loan as of October 12, 2004 shall perform an initial VRA of its electric system no later than July 12, 2005. Additional or periodic VRA's may be necessary if significant changes occur in the borrower's system, and records of such additional assessments shall be maintained by the borrower.

(b) Each applicant that has submitted an application for an RUS electric program loan or grant prior to October 12, 2004, but whose application has not been approved by RUS by such date, shall perform an initial VRA of its electric system in accordance with § 1730.27(a).

(c) Each applicant that submits an application for an RUS electric program loan or grant between October 12, 2004 and July 12, 2005 shall perform an initial VRA of its electric system in accordance with § 1730.27(a).

(d) Each applicant that submits an application for an RUS electric program loan or grant on or after July 12, 2005 shall include with its application package a letter certification that such applicant has performed an initial VRA of its electric system. Additional or periodic VRA's may be necessary if significant changes occur in the borrower's system, and records of such additional assessments shall be maintained by the borrower.

(e) The VRA shall include identifying:

(1) Critical assets or facilities considered necessary for the reliability and security of the electric power grid as described in § 1730.21(c);

(2) Facilities that if damaged or destroyed would cause significant risk to the safety and health of the public;

(3) Critical assets or infrastructure owned or served by the borrower's electric system that are determined, identified and communicated as elements of national security by the consumer, State or Federal government;

(4) External system impacts (interdependency) with loss of identified system components;

(5) Threats to facilities and assets identified in paragraphs (e)(1), (e)(2), (e)(3), and (e)(4) of this section;

(6) Criticality and risk level of the borrower's system;

(7) Critical asset components and elements unique to the RUS borrower's system; and

(8) Other threats, if any, identified by an individual borrower.

§ 1730.28 Emergency Restoration Plan (ERP).

(a) Each borrower with an approved RUS electric program loan as of October 12, 2004 shall have a written ERP no later than January 12, 2006. The ERP should be developed by the borrower individually or in conjunction with other electric utilities (not all having to be RUS borrowers) through the borrower's unique knowledge of its system, prudent utility practices (which includes development of an ERP) and the borrower's completed VRA. If a joint electric utility ERP is developed, each RUS borrower shall prepare an addendum to meet the requirements of paragraphs (e), (f), and (g) of this section as it relates to its system.

(b) Each applicant that has submitted an application for an RUS electric program loan or grant prior to October 12, 2004, but whose application has not been approved by RUS by such date, shall have a written ERP in accordance with § 1730.28(a).

(c) Each applicant that submits an application for an RUS electric program loan or grant between October 12, 2004 and January 12, 2006, shall have a written ERP in accordance with § 1730.28(a).

(d) Each applicant that submits an application for an RUS electric program loan or grant on or after January 12, 2006 shall include with its application package a letter certification that such applicant has a written ERP.

(e) The ERP shall include:

(1) A list of key contact emergency telephone numbers (emergency agencies, borrower management and other key personnel, contractors and equipment suppliers, other utilities, and others that might need to be reached in an emergency);

(2) A list of key utility management and other personnel and identification of a chain of command and delegation of authority and responsibility during an emergency;

(3) Procedures for recovery from loss of power to the headquarters, key offices, and/or operation center facilities;

(4) A Business Continuity Section describing a plan to maintain or re-establish business operations following an event which disrupts business systems (computer, financial, and other business systems); and

(5) Other items, if any, identified by the borrower as essential for inclusion in the ERP.

(f) The ERP must be approved and signed by the borrower's Manager or Chief Executive Officer, and approved by the borrower's Board of Directors.

(g) Copies of the most recent approved ERP must be made readily available to key personnel at all times.

(h) The ERP shall be Exercised at least annually to ensure operability and employee familiarity. Completion of the first exercise of the ERP must occur on or before January 12, 2007.

(i) If modifications are made to an existing ERP:

(1) The modified ERP must be prepared in compliance with the provisions of paragraphs (e), (f), and (g) of this section; and

(2) Additional Exercises may be necessary to maintain employee operability and familiarity.

(j) Each borrower shall maintain records of such Exercises.

§ 1730.29 Grants and Grantees.

For the purposes of this part, the terms ''borrower'' shall include recipients of RUS electric program grants, and ''applicant'' shall include applicants for such grants. References to ''security documents'' shall, with respect to recipients of RUS electric program grants, include grant agreements and other grant-related documents.

Dated: September 24, 2004.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 04–22779 Filed 10–8–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 52

[Docket No. 98–123–7]

RIN 0579–AB10

Pseudorabies in Swine; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rules as final rule.

SUMMARY: We are adopting as a final rule, without change, two interim rules that amended the animal health regulations. The first interim rule established regulations to provide for the payment of indemnity for the voluntary depopulation of herds of swine known to be infected with pseudorabies, and the second interim rule amended the regulations to provide that the indemnity payment will be equal to the difference between the net salvage received and the fair market value of the swine destroyed. The second interim rule also provided for the payment of indemnity for breeding sows destroyed because of pseudorabies. The interim rules allowed for the payment of indemnity from accelerated pseudorabies eradication program funds for swine destroyed because of pseudorabies and were necessary to further pseudorabies eradication efforts and to protect swine not infected with pseudorabies from the disease.

DATES: The interim rules became effective January 12, 1999, and April 12, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Adam Grow, Senior Staff Veterinarian, Swine Health and Disease Programs, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–3752.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective January 12, 1999, and published in the **Federal Register** on January 15, 1999 (64 FR 2545–2550, Docket No. 98–123–2), we established regulations in 9 CFR part 52 to provide for the payment of indemnity by the Animal and Plant Health Inspection Service (APHIS) for the voluntary depopulation of herds of swine known to be infected with pseudorabies. That interim rule, which was intended to encourage the depopulation of infected herds, was necessary to accelerate pseudorabies eradication efforts and to protect swine not infected with pseudorabies from the disease.

We solicited comments concerning the interim rule for 60 days ending March 16, 1999. In a technical amendment published on March 17, 1999 (64 FR 13064–13065, Docket No. 98–123–3), we extended that comment period by an additional 30 days. We received two comments by the April 16, 1999, close of the extended comment period. They were from a trade organization and a U.S. veterinary medical association. The comments are discussed below.

One commenter requested that APHIS consider amending the regulations to require that premises depopulated of swine because of pseudorabies not be restocked for at least 30 days following cleaning and disinfecting, or until an appropriate length of time has passed as determined by a pseudorabies epidemiologist.

In response to that comment, we published the March 17, 1999, technical amendment mentioned above to clarify the provisions contained in the interim rule regarding the waiting period that must be observed before restocking premises depopulated because of pseudorabies. In that technical amendment, we amended the regulations in part 52 to provide that premises that have been depopulated because of pseudorabies may be restocked with swine 30 days following an approved cleaning and disinfection, unless an official pseudorabies epidemiologist determines that a shorter or longer period of time is adequate or necessary to protect new animals against infection. Because the March 1999 technical amendment addressed the commenter's concern, no further response to that comment is necessary in this document.

Both commenters raised concerns that fell outside of the scope of the January 1999 interim rule. One commenter recommended that APHIS increase surveillance to ensure detection of infected animals and requested that APHIS make available Federal funding for vaccines when State funding proves inadequate. The second commenter urged APHIS to increase the speed at

which herds will be depopulated by developing staging areas at slaughter facilities that operate overnight and suggested that APHIS develop a weekly reporting system for herds that have been depopulated so that the disease status of depopulated premises is made available to producers and veterinarians. This commenter further recommended that APHIS develop a final pseudorabies eradication program and encouraged APHIS to establish and fund a pseudorabies acute outbreak team that would be responsible for containing an outbreak and developing a clean-up program.

The January 1999 interim rule established regulations to provide for the payment of indemnity by APHIS for the voluntary depopulation of herds of swine known to be infected with pseudorabies. Issues related to disease surveillance, vaccine program funding, slaughterhouse operations, reporting systems for herd depopulation, and future and final stage pseudorabies eradication efforts fall outside the scope of that rulemaking. Therefore, we are not making any changes to the rule based on these comments.

Finally, one commenter expressed support for APHIS' payment of indemnity to producers for the voluntary depopulation of herds infected with pseudorabies and requested the continued availability of Federal funding for the pseudorabies indemnity program beyond the 6-month timeframe announced in the interim rule.

In a notice published in the **Federal Register** on November 17, 1999 (64 FR 62569–62570, Docket No. 98–123–5), we announced that additional funds had been allocated for the indemnity program and that the program would continue until funds are depleted or until further notice. In that notice, we acknowledged that some States were still conducting their eradication programs and that we considered it important to the pseudorabies eradication effort in the United States to continue the accelerated eradication program beyond the 6-month timeframe stated in the January 1999 interim rule.

In a subsequent interim rule published on April 18, 2000 (65 FR 20706–20712, Docket No. 98–123–6), we revised the method by which owners of swine will receive fair market value for their animals under the accelerated pseudorabies eradication program in order to extend the funds available to APHIS for the program before these funds are exhausted. That April 2000 interim rule amended the regulations in part 52 to provide that APHIS will pay owners either the fair market value of herds of swine depopulated, or the difference between the net salvage value received for herds of swine disposed of through slaughter and the fair market value of those animals. The April 2000 interim rule also allowed owners of breeding sows identified as being infected with pseudorabies to receive indemnity if those sows are sent directly to slaughter, even if the remainder of the herd the sow is part of is not depopulated. These amendments were intended to allow for the payment of indemnity from accelerated pseudorabies eradication program funds for a greater number of swine disposed of because they are infected with pseudorabies.

We solicited comments concerning the April 2000 interim rule for 60 days ending June 19, 2000. We did not receive any comments on that interim rule.

Therefore, for the reasons given in the interim rules and in this document, we are adopting the interim rules as a final rule without change.

This action also affirms the information contained in the interim rules concerning Executive Order 12866 and the Regulatory Flexibility Act, and Executive Order 12988.

Further, this action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements in the interim rules have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579–0137.

List of Subjects in 9 CFR Part 52

Animal diseases, Indemnity Payments, Pseudorabies, Swine, Transportation.

PART 52—SWINE DESTROYED BECAUSE OF PSEUDORABIES

■ Accordingly, we are adopting as a final rule, without change, the interim rule establishing 9 CFR part 52 that was published at 64 FR 2545–2550 on January 15, 1999, as amended by the technical amendment published at 64 FR 13064–13065 on March 17, 1999, and by the interim rule published at 65 FR 20706–20712 on April 18, 2000.

Done in Washington, DC, this 5th day of October 2004 .

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–22789 Filed 10–8–04; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1213]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to reflect the annual indexing of the low reserve tranche and of the reserve requirement exemption amount for 2005. The Board is also announcing the annual indexing of the nonexempt deposit cutoff level and the reduced reporting limit that will be effective beginning in September 2005. The Regulation D amendments increase the amount of net transaction accounts at each depository institution that is subject to a three percent reserve requirement in 2005 from $45.4 million to $47.6 million. This amount is known as the low reserve tranche. The Regulation D amendments also increase the amount of total reservable liabilities of each depository institution that is subject to a zero percent reserve requirement in 2005 from $6.6 million to $7.0 million. This amount is known as the reserve requirement exemption amount. The adjustments to both of these amounts are derived using statutory formulas specified in the Federal Reserve Act.

The Board is also announcing increases in two other amounts, the nonexempt deposit cutoff level and the reduced reporting limit, that are used to determine the frequency with which depository institutions must submit deposit reports. The nonexempt deposit cutoff level is being increased from $161.2 million in 2004 to $169.8 million in 2005, and the reduced reporting limit is being increased from $1.074 billion in 2004 to $1.131 billion in 2005. These amounts are indexed annually in order to reduce reporting burden for smaller

depository institutions. Thus, beginning in September 2005, depository institutions will be required to file the FR 2900 report each week under the following conditions: If they have net transaction accounts over $7.0 million *and* have total deposits of at least $169.8 million; *or* if they have net transaction accounts of $7.0 million or less but have total deposits of at least $1.131 billion. Depository institutions will be required to file the FR 2900 report each quarter if they have net transaction accounts over $7.0 million but have total deposits of less than $169.8 million. Depository institutions will be required to file the FR 2910a report annually if they have net transaction accounts of $7.0 million or less but have total deposits greater than $7.0 million but less than $1.131 billion. Depository institutions with $7.0 million or less in total deposits are not required to file a deposit report.

DATES: *Effective date:* November 12, 2004.

Compliance dates: For depository institutions that report weekly, the adjusted low reserve tranche and reserve requirement exemption amount will apply to the fourteen-day reserve computation period that begins Tuesday, November 23, 2004, and the corresponding fourteen-day reserve maintenance period that begins Thursday, December 23, 2004. For depository institutions that report quarterly, the adjusted low reserve tranche and reserve requirement exemption amount will apply to the seven-day reserve computation period that begins Tuesday, December 21, 2004, and the corresponding seven-day reserve maintenance period that begins Thursday, January 20, 2005. For all depository institutions, the nonexempt deposit cutoff level, the reserve requirement exemption amount, and the reduced reporting limit will be used for 2005 deposit report screening to determine reporting frequency for the twelve-month period that begins in September 2005.

FOR FURTHER INFORMATION CONTACT: Heatherun Allison, Senior Counsel (202/452–3565), Legal Division, or Gretchen Weinbach, Senior Economist (202/452–2841), Division of Monetary Affairs; for user of Telecommunications Device for the Deaf (TDD) only, contact (202/263–4869); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations, for the purpose of implementing monetary policy. Section 11(a)(2) of the Federal Reserve Act (12 U.S.C. 248(a)(2)) authorizes the Board to require reports of liabilities and assets from depository institutions to enable the Board to conduct monetary policy. The Board's actions with respect to each of these provisions are discussed in turn below.

1. Reserve Requirements

Pursuant to section 19(b)(2) of the Federal Reserve Act, transaction account balances maintained at each depository institution up to a certain amount, known as the low reserve tranche, are subject to a three percent reserve requirement. Net transaction account balances over the low reserve tranche are subject to a ten percent reserve requirement. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The adjustment in the low reserve tranche is to be 80 percent of the percentage increase or decrease in net transaction accounts at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Currently, the low reserve tranche is $45.4 million. Net transaction accounts of all depository institutions rose 6.0 percent (from $654.4 billion to $693.8 billion) between June 30, 2003 and June 30, 2004. Accordingly, the Board is amending Regulation D (12 CFR part 204) to increase the low reserve tranche for net transaction accounts by $2.2 million, from $45.4 million in 2004 to $47.6 million in 2005.

Section 19(b)(11)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(11)(A)) provides that a zero percent reserve requirement shall apply at each depository institution to total reservable liabilities that do not exceed a certain amount, known as the reserve requirement exemption amount.

Section 19(b)(11)(B) provides that, before December 31 of each year, the Board shall issue a regulation adjusting the reserve requirement exemption amount for the next calendar year if total reservable liabilities held at all depository institutions increase from one year to the next. Unlike the low reserve tranche, which can be adjusted upward or downward, no adjustment is made to the reserve requirement exemption amount if total reservable liabilities held at all depository institutions should decrease during the applicable time period. The percentage increase in the reserve requirement exemption amount is to be 80 percent of the increase in total reservable liabilities at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Total reservable liabilities of all depository institutions increased by 7.1 percent (from $2,786.0 billion to $2,983.8 billion) between June 30, 2003, and June 30, 2004. Accordingly, the Board is amending Regulation D to increase the reserve requirement exemption amount by $0.4 million, from $6.6 million in 2004 to $7.0 million in 2005.[1]

For depository institutions that report weekly, the adjusted low reserve tranche and reserve requirement exemption amount will be effective for the fourteen-day reserve computation period beginning Tuesday, November 23, 2004, and for the corresponding fourteen-day reserve maintenance period beginning Thursday, December 23, 2004. For depository institutions that report quarterly, the adjusted low reserve tranche and reserve requirement exemption amount will be effective for the seven-day reserve computation period beginning Tuesday, December 21, 2004, and for the corresponding seven-day reserve maintenance period beginning Thursday, January 20, 2005.

2. Deposit Reports

Section 11(b)(2) of the Federal Reserve Act authorizes the Board to require depository institutions to file reports of their liabilities and assets as the Board may determine to be necessary or desirable to enable it to discharge its responsibility to monitor and control the monetary and credit aggregates. The Board screens depository institutions each year to determine whether they must file deposit reports and, if so, how frequently they must file them (weekly, quarterly, or annually). These deposit reporting assignments become effective each September.

The screening of depository institutions for assignment to one of the four deposit reporting categories is based on three amounts: the reserve requirement exemption amount, the nonexempt deposit cutoff level, and the reduced reporting limit. The annual adjustment to the first amount, the reserve requirement exemption amount, is described in Section 1 above. The other two amounts, the nonexempt deposit cutoff level and the reduced reporting limit, are also adjusted annually, by an amount equal to 80 percent of the increase, if any, in total

[1] Consistent with Board practice, the low reserve tranche and reserve requirement exemption amounts have been rounded to the nearest $0.1 million.

deposits at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Total deposits at all depository institutions increased by 6.7 percent (from $6,534.2 billion to $6,969.8 billion) between June 30, 2003 and June 30, 2004. Accordingly, the Board is adjusting the nonexempt deposit cutoff level upward by $8.6 million, from its current level of $161.2 million in 2004 to $169.8 million in 2005. The Board is also adjusting the reduced reporting limit upward by $57 million, from its current level of $1.074 billion in 2004 to $1.131 billion in 2005.[2]

Beginning in September 2005, the boundaries of the four deposit reporting categories will be defined as follows. Those depository institutions with net transaction accounts over $7.0 million (the reserve requirement exemption amount) or total deposits greater than or equal to $1.131 billion (the reduced reporting limit) are subject to detailed reporting, and must file an FR 2900 report either weekly or quarterly. Of this group, those with total deposits greater than or equal to $169.8 million (the nonexempt deposit cutoff level) are required to file the FR 2900 report each week, while those with total deposits less than $169.8 million are required to file the FR 2900 report each quarter. Those depository institutions with net transaction accounts less than or equal to $7.0 million (the reserve requirement exemption amount) and with total deposits less than $1.131 billion (the reduced reporting limit) are eligible for reduced reporting, and must either file a deposit report annually or not at all. Of this group, those with total deposits greater than $7.0 million (but less than $1.131 billion) are required to file the FR 2910a report annually, while those with total deposits less than or equal to $7.0 million are not required to file a deposit report. A depository institution that manipulates its reporting, however, in an attempt to qualify for less frequent reporting or to reduce its reserve requirement may be required to report the FR 2900 on a weekly basis and maintain appropriate reserve balances with its Reserve Bank, regardless of its most recent panel assignment.

Notice and Regulatory Flexibility Act.

The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments prescribed by statute and by the Board's policy concerning reporting practices. The increases in the reserve requirement exemption amount, the low reserve tranche, the nonexempt deposit cutoff level, and the reduced reporting limit serve to reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary. Consequently, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to these amendments.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

■ 2. Section 204.9 is revised to read as follows:

§ 204.9 Reserve requirement ratios.

The following reserve requirement ratios are prescribed for all depository institutions, banking Edge and agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement
Net transaction accounts:	
$0 to $7.0 million	0 percent of amount.
Over $7.0 million and up to $47.6 million	3 percent of amount.
Over $47.6 million	$1,218,000 plus 10 percent of amount over $47.6 million.
Nonpersonal time deposits	0 percent.
Eurocurrency liabilities	0 percent.

By order of the Board of Governors of the Federal Reserve System.

October 5, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–22772 Filed 10–8–04; 8:45 a.m.]

BILLING CODE 6210–01–P

[2] Consistent with Board practice, the nonexempt deposit cutoff level has been rounded to the nearest $0.1 million, while the reduced reporting limit has been rounded to the nearest $1 million.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 734, 746, 770, 772 and 774

[Docket No. 040920270–4270–01]

RIN 0694–AD13

Nomenclature Change: References to Another Agency

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; Nomenclature change.

SUMMARY: The Export Administration Regulations (EAR) are amended to update certain references to the U.S. State Department's Directorate of Defense Trade Controls. The EAR contain references to this agency under its current name and under its former name, the Office of Defense Trade Controls. This amendment will remove the possibility that a member of the public might think that two different offices are being referenced.

DATES: Effective October 12, 2004.

ADDRESSES: Although this is a final rule, comments are welcome and should be addressed to Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, E-mailed to: *tmooney@bis.doc.gov,* or faxed to 202–482–3355.

FOR FURTHER INFORMATION CONTACT: Timothy Mooney, Regulatory Policy Division, Bureau of Industry and Security, Telephone: (202) 482–2440, E-mail: *tmooney@bis.doc.gov.*

SUPPLEMENTARY INFORMATION

Background

This rule amends the Export Administration Regulations (EAR) to conform with a decision made by the Department of State, through an internal organizational order, to change the name of the Office of Defense Trade Controls to the ''Directorate of Defense Trade Controls.'' Consistent with this name change, this rule makes a number of changes in chapter VII, subchapter C of title 15 of the Code of Federal Regulations, the Export Administration Regulations (EAR). Specifically, this rule changes all references to the ''Office of Defense Trade Controls'' and ''DTC'', wherever they appear in chapter VII, subchapter C to the ''Directorate of Defense Trade Controls'' and ''DDTC'', respectively. In addition, this rule changes the appropriate definitions sections to conform to the new name of the office.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended by the Notice of August 6, 2004, 69 FR 48763 (August 10, 2004) continues the Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. This rule does not impose information collection or recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this rule involves a rule of agency organization, procedure, or practice. 5 U.S.C. 553(b). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) are not applicable.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

15 CFR Parts 746 and 774

Exports, Reporting and recordkeeping requirements.

15 CFR Parts 770 and 772

Exports.

■ For the reasons set forth in the preamble, 15 CFR chapter VII, subchapter C is amended as set forth below.

PART 730—[AMENDED]

■ 1. The authority citation for part 730 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 2151 note, Pub. L. 108–175; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 2. In Part 730, revise all references to the ''Office of Defense Trade Controls'' to read ''Directorate of Defense Trade Controls''; and revise all references to ''DTC'' to read ''DDTC''.

PART 734—[AMENDED]

■ 3. The authority citation for part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 4. In Part 734, revise all references to the ''Office of Defense Trade Controls'' to read ''Directorate of Defense Trade Controls''; and revise all references to ''DTC'' to read ''DDTC''.

PART 746—[AMENDED]

■ 5. The authority citation for part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11,117 Stat. 559; 22 U.S.C. 6004; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 6. In Part 746, revise all references to the ''Office of Defense Trade Controls'' to read ''Directorate of Defense Trade Controls''; and revise all references to ''DTC'' to read ''DDTC''.

PART 770—[AMENDED]

■ 7. The authority citation for part 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 8. In Part 770, revise all references to the ''''Office of Defense Trade Controls'' to read ''Directorate of Defense Trade Controls''; and revise all references to ''DTC'' to read ''DDTC''.

PART 772—[AMENDED]

■ 9. The authority citation for part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 10. In § 772.1, remove the definition of ''Defense Trade Control (DTC)'' and add in alphabetical order the definition of ''Directorate of Defense Trade Controls'', as set forth below.

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Directorate of Defense Trade Controls (DDTC). The office at the Department of State, formerly known as the Office of Defense Trade Controls and before that as the Office of Munitions Control, responsible for reviewing applications to export and reexport items on the U.S. Munitions List. (See 22 CFR parts 120 through 130.)

* * * * *

PART 774—[AMENDED]

■ 11. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 12. In Supplement No. 1 to Part 774, revise all references to the ''Office of Defense Trade Controls'' to read ''Directorate of Defense Trade Controls''; revise all references to ''Directorate of Defense Trade Control'' to read ''Directorate of Defense Trade Controls''; and revise all references to ''DTC'' to read ''DDTC''.

Dated: October 4, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–22861 Filed 10–8–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 558

New Animal Drugs; Change of Sponsor; Sulfaquinoxaline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an approved new animal drug application (NADA) from Hess & Clark, Inc., to Phoenix Scientific, Inc.

DATES: This rule is effective October 12, 2004.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.gov*.

SUPPLEMENTARY INFORMATION: Hess & Clark, Inc., 944 Nandino Blvd., Lexington, KY 40511, has informed FDA that it has transferred ownership of , and all rights and interest in, the following three approved NADAs, to Phoenix Scientific, Inc., 3915 South 48th Street Ter., St. Joseph, MO 64503:

NADA Number	Trade Name
6–391	S.Q. (sulfaquinoxaline) 40% Medicated Feed
6–677	S.Q. (sulfaquinoxaline) 20% Solution
7–087	Sulfaquinoxaline Solubilized

Accordingly, the agency is amending the regulations in 21 CFR 520.2325a and 558.586 to reflect the transfer of ownership and a current format.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 558 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.2325a [Amended]

■ 2. Section 520.2325a is amended in paragraph (a)(1) by removing ''050749'' and by adding in its place ''059130''.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 4. Section 558.586 is amended by revising the section heading; by removing paragraphs (c) and (d); by redesignating paragraphs (e) and (f) as paragraphs (c) and (d); and by revising paragraph (a) and adding paragraph (b) to read as follows:

§ 558.586 Sulfaquinoxaline.

(a) *Specifications.* Type A medicated articles containing 40 percent sulfaquinoxaline.

(b) *Approvals.* See No. 059130 in § 510.600(c) of this chapter.

* * * * *

Dated: September 27, 2004.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 04–22760 Filed 10–8–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA89

TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2002, (NDAA–02), and a Technical Correction Included in the NDAA–03

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule makes several changes to the TRICARE program authorized by Congress in the NDAA–02. Specifically, revisions to the definition of durable medical equipment (DME); adoption of the same pricing methods for durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) as are in effect for the Centers for Medicare & Medicaid Services (CMS); clarification that rehabilitative therapy is a TRICARE benefit; addition of augmentative communication devices (ACD)/speech generating devices (SGDs) as a TRICARE benefit; addition of hearing aids for family members of active duty members as a TRICARE Basic Program benefit; revisions to the definition of prosthetics; permanent authority for transitional health care for certain members separated from active duty; and revisions to the time period of eligibility for transitional health care.

This final rule also addresses a technical correction found in section 706 of the Bob Stump NDAA–03, relating to transitional health care for dependents of certain members separated from active duty.

DATES: This rule is effective December 13, 2004. Actual implementation will coincide with the transition in each TRICARE Region to the next generation

TRICARE Managed Care Support Contracts, which are scheduled to take effect over a period of months ending on November 1, 2004.

ADDRESSES: TRICARE Management Activity, Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, Colorado 80011–9066.

FOR FURTHER INFORMATION CONTACT: Ann N. Fazzini, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone, (303) 676–3803. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of April 16, 2003, (68 FR 18575), the Office of the Secretary of Defense published for public comment a proposed rule regarding a number of changes included in the NDAA–02 (Pub. L. 107–107, December 28, 2001). These changes include revisions to the definition of durable medical equipment (DME); adoption of the same pricing methods for durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) as are in effect for the Centers for Medicare & Medicaid Services (CMS); clarification that rehabilitative therapy is a TRICARE benefit; addition of augmentative communication devices (ACD)/speech generating devices (SGDs) as a TRICARE benefit; addition of hearing aids for family members of active duty members as a TRICARE Basic Program benefit; and revisions to the definition of prosthetics.

In addition to the above benefit changes, the NDAA 02 gave permanent authority for transitional health care for certain members separated from active duty. Prior to the NDAA 02, the Transitional Assistance Management Program (TAMP)—the program through which certain separating members and their dependents receive transitional health care—was scheduled to cease as of December 30, 2001. The NDAA 02, deleted the expiration date and made the TAMP program a permanent program.

Another change was made to transitional health care by the NDAA 02. Prior to the NDAA 02, certain separating members and their dependents received transitional health care until the earlier of: (1) 30 days after the date of the release of the member from active duty; or (2) the date on which the member and the dependents of the member are covered by a health plan sponsored by an employer. The groups who received transitional health care within the above parameters included: (1) A member of a reserve component called or ordered to active duty in support of a contingency operation; (2) a member involuntarily retained on active duty under section 12305 in support of a contingency operation; or (3) a member who voluntarily agrees to remain on active duty for a period of less than one year in support of a contingency operation.

The changes made in the NDAA 02 deleted the 30 day limit and changed the coverage period to 60 days of coverage for those separated with less than six years of active service or 120 days of coverage for those separated with six or more years of active service.

This final rule also provides for a technical correction found in the Bob Stump NDAA 03.

The NDAA 04, Pub. L. 108–136, contains additional changes to the transitional health care coverage period. These changes expire on December 31, 2004. If these changes are extended or made permanent they will be addressed in a separate rule.

As a result of the publication of the proposed rule, the following comments were received from interested parties, associations and the government agencies that by law TRICARE is required to consult during the rule making process.

Review of Comments

We noticed the comments that we received could be classified into four major areas. The first is that there is a perception that the NDAA 02 language somehow eliminates or diminishes the ''medical necessity'' provision and other provisions found in TRICARE law. The second is a lack of understanding or awareness that the Program for Persons with Disabilities (PWPWD) and the TRICARE Basic Program are separate and distinct programs. The third is disagreement with our statement in the proposed rule that TRICARE's current policies in place at the time provide coverage within the NDAA 02 criteria. The fourth and final area is a concern with our proposed definition of rehabilitative therapy.

We address each of these major areas separately and then address the general comments that we received on the proposed rule.

I. Medical Necessity and Other Provision

Several of the changes authorized by Congress permit therapy for the purpose of either improving, restoring, maintaining, or preventing deterioration of function, or an accessory or item of supply that is used in conjunction with a device for the purpose of achieving therapeutic benefit and proper functioning. We received comments from several entities stating that they believe the statutory reference to the ''functional status'' of a beneficiary is to be used as the sole basis for determining coverage, rather than using the requirement that a service or supply must be medically or psychologically necessary as required by 10 U.S.C. 1079(a)(13). This belief is incorrect. One is to keep in mind that the provisions found in the NDAA 02 must be read in conjunction with the all other statutory provisions and parameters that govern the TRICARE program under title 10, United States Code, chapter 55. The most significant parameter for the TRICARE program is found at 1079(a)(13) and excludes:

> Any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician, dentist, clinical psychologist, certified marriage and family therapist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, or certified clinical social worker, as appropriate, may not be provided, except as authorized elsewhere * * *.

The types of health care services authorized by Congress in the NDAA–02 that this rule implements provide for the types of health care that ''may be'' provided by the TRICARE program. This must be read in conjunction with the medical necessity requirement. Consequently, any therapy for the purpose of either improving, restoring, maintaining, or preventing deterioration of function, or an accessory or item off supply that is used in conjunction with a device for the purpose of achieving therapeutic benefit and proper functioning must be medically necessary before it can be cost shared by TRICARE.

Another provision/parameter of the TRICARE program that must be considered when interpreting the NDAA 02 legislation is the prohibition against providing custodial care. Custodial care is excluded from TRICARE coverage under section 1077(b)(1) and is defined in section 1072(a) as:

> Custodial care means treatment or services, regardless of who recommends such treatment or services or where such treatment or services are provided that—(A) can be rendered safely and reasonably by a person who is not medically skilled; or (B) is or are designed mainly to help the patient with activities of daily living.

In summary, we do not concur with the interpretation that the NDAA 02

language reduces the significance of or eliminates the use of the medical necessity provision and other provisions found in TRICARE law. TRICARE considers the functional status of an individual as a factor, but that factor does not usurp the requirement of medical necessity or custodial care. The medical necessity and custodial care provisions, as well as all other parameters and provisions that govern the TRICARE program, must be considered concurrently with the provisions added in the NDAA 02, consistent with the rules of statutory construction defined in title 10, Untied States Code.

II. PFPWD in Relation to the Basic Program

The PFPWD and the TRICARE Basic Program are separate and distinct programs with their own statutory basis, to include separate/different eligibility provisions, cost-sharing provisions, and benefit provisions. The PFPWD, based upon 10 U.S.C. 1079(d)–(f), is implemented in 32 CFR 199.5, and describes eligibility provisions, cost-sharing provisions, and benefit provisions under the PFPWD. The changes to the PFPWD authorized by section 701(d) of the NDAA 02 are being implemented under a separate rule. The TRICARE Basic Program Benefits are implemented in 32 CFR 199.4. While the programs are separate and distinct, the PFPWD is available for use in conjunction with the TRICARE Basic Program. The PFPWD was congressionally established approximately 35 years ago to help defray the costs of services not available either through the TRICARE Basic Program or through other public agencies. This includes, but is not limited to, services such as training, special education and adjunct services (*e.g.,* equipment adaptation).

This rule makes no changes to the PFPWD program found at 32 CFR 199.5. There are some services and supplies that are currently covered under the PFPWD but are not covered under the TRICARE Basic Program. This will continue. For example, training, special education, and eyeglasses may be covered under the PFPWD but they are excluded from the TRICARE Basic Program.

Hearing aids are currently allowed exclusively as a benefit under the PFPWD; however, upon implementation of this final rule, hearing aids will be considered a benefit under the TRICARE Basic Program, although still statutorily limited to dependents of active duty members.

Additionally, upon implementation of this rule, those ACDs/SGDs defined in this rule and that otherwise meet the policies and provisions of the TRICARE Basic Program will be covered as a benefit under the Basic Program. There will be some communicative devices, that do not meet the definition of ACD/SGD, but that are considered communication devices, that have been allowed for coverage under the PFPWD. This will not change and those devices will continue to be provided.

Again, this rule makes no change to the regulatory section that governs the PFPWD.

III. TRICARE's Current Policies

We received comments stating that the NDAA 02 provisions ''Congress intended that this new law would stimulate TRICARE to provide greater access to appropriate assistive devices, technologies and related services.'' The comments subsequently expressed concerns with our position that TRICARE's policies in place at this time provide coverage within these criteria. When we made the ''current policies'' statement, we were referring to the policies found in the TRICARE Policy Manual and the TRICARE Reimbursement Manual. These manuals contain detailed policies on a variety of topics, to include DME and prosthetics. They may be accessed through the TRICARE Web site at *http://www.tma.osd.mil.* The policies expressed in these manuals are TRICARE's interpretation of its governing statutes (primarily title 10, United States Code, chapter 55) and our regulation implementing these statutes (32 CFR part 199).

We reviewed the proposed rule and found that we made the statement regarding our current policies in the **SUPPLEMENTARY INFORMATION** Section of the rule in two places: the durable medical equipment section and the prosthetics section. Regarding DME, we received comments stressing that TRICARE needs to be aware of the necessity to customize DME to meet an individual's needs. We are. The Durable Medical Equipment policy is found at chapter 7, section 3.1 in the TRICARE Policy Manual. This policy defines DME and provides guidance on when DME may be repaired, replaced, modified, and/or customized. The policy currently reflects the provisions added in the NDAA–02. This final rule incorporates the new statutory authorization into 32 CFR part 199. In the Supplementary Information we were simply saying that our interpretation of previous statutory authorizations and implementing regulations in the TRICARE Policy Manual were consistent with how we interpret the new authorizations. Hence, TRICARE's current policies in place provide coverage within the NDAA 02 criteria.

With regard to prosthetics, section 702 of NDAA–02, gives the Department the authority to provide a prosthetic device that includes the following: (1) Any accessory or item of supply that is used in conjunction with the device for the purpose of achieving therapeutic benefit and proper functioning. (2) Services necessary to train the recipient of the device in the use of the device. (3) Repair of the device for normal wear and tear or damage. (4) Replacement of the device if the device is lost or irreparably damaged or the cost of repair would exceed 60 percent of the cost of replacement. (5) A prosthetic device customized for a patient may be provided under this section only by a prosthetic practitioner who is qualified to customize the device, as determined under regulations prescribed by the Secretary of Defense in consultation with the other Secretaries.

As stated in the proposed rule, TRICARE's current policies do offer benefits for the above criteria 1, 2, 3, and 5. Regarding criterion (4), TRICARE currently allows for replacement when required due to growth or change in the patient's condition. Nonetheless, our policies will be revised to ensure consistency with the language found in section 702 and will reflect a greater opportunity to acquire replacement prosthesis.

Regarding criterion 5, TRICARE has no specific provider requirements for a prosthetic practitioner to be qualified to customize the device. Rather, otherwise authorized TRICARE providers currently provide prostheses and customization of prostheses, such as medical equipment firms, medical supply firms, and Durable Medical Equipment, Prosthetic, Orthotic supplies providers/suppliers. As stated in the proposed rule, we are aware that CMS has established a Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics. The purpose of this committee is to advise CMS on developing a proposed rule that would establish payment provisions and requirements for providers of prostheses and custom-fabricated orthotics under the CMS. Once the Committee provides its findings, we will review them for consideration under the TRICARE program. After our review, we will use the rulemaking process and the public will have an opportunity to comment on our proposed provisions regarding these

types of providers. In the meantime, we will continue to allow prostheses customization by otherwise authorized TRICARE providers.

The proposed rule states that where our current policies deviate from the new statutory language, we are adopting the new statutory language and will amend our policies to reflect that language.

IV. Rehabilitative Therapy

We received numerous comments from entities who expressed concern with our definition of rehabilitative therapy. The commenters stated that defining rehabilitative therapy to include only physical therapy (PT), speech therapy (ST), and occupational therapy (OT) violates that intent of the statute. The commenters listed numerous additional therapies that they believe should be available for coverage under the statutory language.

Again, parameters and provisions that govern the TRICARE program must be read in their entirety. By defining rehabilitative therapy as PT, OT, and ST, we did not mean to imply that all other therapies are excluded and are not eligible for TRICARE coverage. Other therapies that are medically necessary and appropriate, that are proven medical treatment, that are not considered as custodial care, that are provided by an authorized TRICARE provider and that are not otherwise excluded as a TRICARE benefit may be considered for TRICARE coverage.

However, in order to avoid any misunderstanding, we have revised the definition of rehabilitative therapy to reflect the statutory language rather than define it as PT, OT, and ST only.

V. Additional Comments

In addition to the four major areas in which we received comments, we received general comments regarding most of the proposed provisions. Those comments are responded to as follows:

ACD/SGD

Comment 1: One commenter questioned whether including the highly specific definition of an ACD/SGD in the TRICARE regulation is appropriate. The commenter proposed that TRICARE adopt a more general definition of ACD/SGD devices in its regulations, leaving the specific distinctions of the TRICARE Policy Manual.

Response: We concur with this recommendation. The purpose of the CFR is to provide broad guidelines and policies. The publishing of detailed criteria for a speech generating device in section 32 CFR 199.2 may prove difficult to maintain and update, if necessary. To assist our beneficiaries in obtaining benefit coverage in a timely manner, the detailed ACD/SGD definition included in the proposed rule has been replaced with the statutory language. We will, place the specific ACD/SGD criteria that were included in the proposed rule into the TRICARE Policy Manual (TPM). That is, we will be adopting CMS's augmentative communication device guidelines as we indicated in the proposed rule and we will incorporate CMS's guidelines into the TPM. The TPM contains policies to implement 32 CFR Part 199 and must be used in conjunction with the CFR for complete policy information. The TPM can be accessed through the TRICARE Web site at *http://www.tricare.osd.mil.*

Comment 2: We received comments regarding the specific ACD/SGD criteria. For example, it was pointed out to us that we failed to include one of CMS's criteria in our definition.

Response: The omission of the criterion was an oversight and will be corrected. We have decided to include only the NDAA 02 statutory requirements in the regulation rather than listing the specific ACD/SGD criteria. We plan to include the specifics regarding ACD/SGD coverage (*i.e.,* criteria similar to CMS's coverage criteria) in the TRICARE Policy Manual.

Comment 3: We received comments regarding our decision to adopt CMS's coverage of SGDs for ACDs. Some of the commenters applauded our decision to adopt CMS's policy. Others expressed dissatisfaction.

Response: The NDAA 02 amended title 10, United States Code, by adding a new subsection 1077(e)(2), which says, ''An augmentative communication device may be provided under subsection (a)(15).'' Subsection (a)(15) states that the Department may provide, ''Prosthetic devices, as determined by the Secretary of Defense to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease.'' The Department, in developing its guidelines, policies, and coverage criteria of ACDs/SGDs, is required to classify them as voice prosthesis, while CMS may classify ACDs/SGDs as durable medical equipment. Although we are required to classify them as voice prosthesis, our decision to adopt CMS's coverage of SGDs for ACDs is consistent with TRICARE seeking consistency with CMS. CMS, like TRICARE, is a federal program, and where appropriate, adoption of their national standard helps ensure delivery of a uniform benefit.

Comment 4: A commenter asked whether argumentative communication devices/or speech generating devices were covered previously only under the PFPWD. They also asked whether tracheostomy valves and cochlear implants were purchased under TRICARE and whether these provisions will remain unchanged.

Response: ACDs/SGDs are currently allowed under the PFPWD when there is a serious physical disability and the individual qualifies for the PFPWD. Since certain ACDs/SGDs will now be a benefit under the Basic Program, the individual will no longer have to qualify for PFPWD. Also, unlike hearing aids, this benefit is not limited to dependents of active duty members. The PFPWD is a program statutorily limited to only active duty dependents, so this is an expansion of benefits.

Tracheostomy valves and cochlear implants have been TRICARE benefits and this remains unchanged.

Comment 5: A commenter recommended that ACDs/SGDs also include non-speech generating devices which also help an individual to maximize communication skills for functional and effective communication.

Response: The statutory language states that ACDs may be provided as a voice prosthesis. We interpret this as speech generating devices only. There will be some communicative devices that do not meet the definition of ACD/SGD, but that are considered communication devices, that have been allowed for coverage under the PFPWD. This will not change and those devices will continue to be provided.

Comment 6: The narrative introduction to the proposed ACD/SGD regulations states that ''In proposing this policy, we have also taken into consideration recommendations provided to us by the American Speech Language Hearing Association (ASHA) in defining this benefit.'' ASHA's recommendations, submitted in March 22, 2002, did not infer that covered ACDs should be limited to SGDs as currently proposed.

Response: We apologize for inferring that the ASHA recommended that ACDs should be limited to those SGDs outlined in the proposed rule.

Comment 7: A commenter recommended that the services of speech-language pathologists be required as related to ACD/SGD evaluation and establishment of a treatment plan. Such is the requirement specified in the DMERC Supplier Manual reference above. If it is not appropriate to include this requirement in the regulation, then it should appear in the policy manual.

Response: TRICARE will allow otherwise covered medically necessary and appropriate services required and prescribed by a physician that are associated with the ACD/SGD.

Prosthetics

Comment 8: One commenter restated the changes regarding prosthetics and expressed concern that the same coverage policies are not being applied to TRICARE's orthotic benefit.

Response: The NDAA 02 statutory language refers only to prosthetic devices and makes no mention of orthotic care. Therefore, orthotic care is not addressed in this regulation.

Comment 9: We have concerns about the future findings of the CMS established Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Orthotics.

Response: If TRICARE decides to make any changes based on CMS's negotiated rulemaking, we will publish a proposed rule with a comment period giving the public an opportunity to voice their concerns.

Hearing Aids

Comment 10: Two commenters stated that they agree that there is not industry standard or industry definition of ''profound'' hearing loss and they proposed changing the dB level of profound hearing loss for children. The dB level in the proposed rule was 26 dB. The commenter asked us to change it to 15dB.

Response: The statutory language provides coverage for a hearing aid when a ''profound hearing loss'' is present. There is no industry standard or industry definition of ''profound'', we consulted with TRICARE, Veterans Affairs, and Service physicians and Audiology Consultants who informed us a 26dB level falls within a mild hearing loss range. Consequently, we believe 26dB is a reasonable and generous interpretation of profound hearing loss. Under PFPWD, the dB level was 45dB or greater in one ear or 30dB in both ears. By lowering the dB level to 26 we are making this benefit much more generous than what was previously available under the PFPWD.

Comment 11: We were asked to include a statement that testing areas should be in compliance with ANSI standard S3.1–1999, Maximum Permissible Ambient Noise Levels for Audiometric Test Rooms, or any future revision thereof.

Response: We have taken this under advisement. If necessary and appropriate, we will include such a statement in the TRICARE Policy Manual hearing aid issuance.

Comment 12: A commenter urged TRICARE to require that any hearing aid fitting services for a TRICARE beneficiary be provided by an ASHA-certified, and where applicable, licensed audiologist. We believe that audiologists holding the Certificate of Clinical Competence in Audiology (CCC–A) as granted by ASHA will help assure a high level of quality in the delivery of this important benefit.

Response: TRICARE has established the regulatory criteria for being an authorized TRICARE provider based upon the broad statutory guidelines contained in title 10, United States Code, chapter 55, and primarily 10 U.S.C. 1079(a)(13) and 1079(a)(8). For individual paramedical providers under TRICARE, 32 CFR 199.6(c)(3)(iii)(I)(*4*) lists audiologists. Paramedical providers may be reimbursed for services provided on a fee-for-service basis only if the beneficiary is referred by a physician for the treatment of a medically diagnosed condition and a physician must also provide continuing and ongoing oversight and supervision of the program or episode of treatment provided by the audiologists. All paramedical providers must be licensed if required in that state, and where a state does not license a specific category or paramedical, certification by a Qualified Accreditation Organization as defined in § 199.2 is required. Certification must be at full clinical practice level.

Comment 13. One commenter stated that they prefer that the limitation exists that anyone with hearing loss ''that interferes with communication'' would be eligible for coverage.

Response: The term ''profound'' hearing loss appears in the statute and TRICARE has used its discretion in interpreting that term. Prior to the implementation of this rule, and when the benefit was available under PFPWD, the dB level was 45dB or greater in one ear or 30dB in both ears. By lowering the dB level to 26 we are making this benefit much more generous than what was previously available under the PFPWD.

Comment 14: One commenter stated that the proposed criteria for adults and children listed in this new rule will appropriately allow patients with vocational, social, psychological and environmental needs to receive benefits from hearing amplification. However, they also stated that the evaluation and treatment process would be greatly enhanced by the development of a comprehensive protocol utilizing non-audiometric data. They state that a comprehensive protocol for determining hearing aid candidacy and treatment strategies would include data such as the client's physical status (dexterity, visual status), psychological status (attitude, motivation, cognitive and mental status), and communication status (auditory-visual speech perception abilities, auditory speech perception abilities) and the unique communication environments in which the client must function.

Response: In addition to now paying for a hearing aid for a dependent of an active duty member who has a profound hearing loss, TRICARE will also cover all medically necessary and appropriate services and supplies associated with the hearing aid.

Comment 15: A commenter advised us that we may receive some comments which dispute the proposed rule's proposed definition of what constitutes a ''profound'' hearing loss, since typical clinical categorizations (using pure tone hearing thresholds alone) would not typically associate ''profound'' with the range of hearing thresholds listed in section 199.2. They stated that they are aware of, and agree with, the intentions of the audiologist consultants from the Department of Defense and the Department of Veterans Affairs who provided guidance in the drafting of this rule. They also agree that there is no universal standard for ''profound'' loss. The comment continued by stating that if hearing aids were only made available to individuals with audiometric thresholds exceeding 90dBHL (considered by many physicians to represent a profound loss, using only pure tone audiometry results), most hearing impaired patients would be inappropriately excluded.

Response: We thank the commenter for their support and acknowledgement of the sufficiency and appropriateness of our criteria of 40dB and 26db when defining a profound hearing loss.

Comment 16: A comment was received recommending that the Supplementary Information portion of Section V. Hearing Aids include the requirements for a qualified audiologist.

Response: Audiologists are currently authorized providers under TRICARE. See 32 CFR 199.6 (c)(3)(iii)(I). Now that hearing aids are a Basic Program benefit for active duty family members, otherwise covered services and supplies associated with audiologists and speech therapists may be covered. Consequently, we have deleted the Basic Program exclusion found at 32 CFR 199.4 (g)(45) regarding audiologists and speech therapists. While we are deleting the exclusion, it is necessary to point out that otherwise covered

services and supplies from these types of providers may be provided only if the beneficiary is referred by a physician for the treatment of a medically diagnosed condition and a physician must also provide continuing and ongoing oversight and supervision of these providers.

Comment 17: We find no reference in the rule to how TRICARE payment methods would apply. We anticipate that TRICARE payments for hearing aids will remain consistent with what the standard had been under the PFPWD. Under this program, the active duty sponsor was responsible for a co-payment based on their rank (*e.g.* ranging from $25 to $250 per $1000, per device).

Response: Under the TRICARE Basic Program, the beneficiary's cost share (and deductible, if any) will be based upon which program they are participating in (TRICARE Prime, Standard, or Extra), and their status as the dependent of an active duty member (statutorily hearing aids are available to only the dependent of an active duty family member). Cost shares and deductibles are also statutorily based upon these two factors. The copayments and cost-shares for the TRICARE Basic Program have a different statutory basis than the PFPWD. Because hearing aids will now be obtained by dependents of an active duty family member under the Basic Program, the Basic Program cost-sharing provisions must apply. These copayments are as follows: TRICARE Prime active duty beneficiaries will have no copayment (i.e., a $0.00 copayment); those who use TRICARE Standard will have a 20% cost share after meeting their statutory fiscal year deductible ($150 for an individual/$300 for a family; $50/$100 for dependents of E—4 or below); those who use TRICARE Extra will have 15% cost-sharing after meeting their statutory deductible.

Comment 18: Is this really an expansion of hearing aid benefits to AD dependents since it is already being provided under the PFPWD guidelines and all who need an aid qualify for PFPWD?

Response: Hearing aids will be offered under the Basic Program only and will not be offered as a benefit under the PFPWD once this rule is implemented. It is an enhancement of benefits because we have relaxed the hearing levels necessary to qualify for a hearing aid and have offered hearing aids to all active duty family members who meet the criteria. Additionally, those enrolled in TRICARE Prime will have no cost share, as opposed to the statutory cost share based on rank that they pay today when they access the benefit under the PFPWD.

Comment 19: Does the change mean that the military treatment facility (MTFs) will be fitting and purchasing the aids through our VA contract, rather than in the civilian sector, thus saving tax dollars and that is the reason for the change?

Response: The reason for the change is that the NDAA–02 authorized hearing aids as a TRICARE benefit under the Basic program. The use of a VA contract to fit and purchase hearing aids is a decision that needs to be made by the MTF.

Comment 20: Currently assistive listening devices are purchased via the PFPWD. The exclusion of auditory sensory enhancing devices in the proposed rule will not affect what we currently purchase through the PFPWD correct?

Response: Correct. The exclusion found in the proposed rule applies to the TRICARE Basic program, not the PFPWD.

DME

Comment 21: Under the new statute, we would anticipate, assuming that other conditions of coverage are met, that TRICARE would cover certain sensory or communication aids such as screen readers, Closed Circuit TVs, or other optical scanners for people with vision impairments. Similarly we would expect that TRICARE would potentially cover certain home modifications such as grab bars and raised toilet seats that facilitate better functioning with self care, safety, and may prevent conditions such as hip fractures and other injuries from falls.

Response: As previously discussed, under 10 U.S.C. 1079(a)(13), TRICARE may not provide any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician or other authorized provider. Those items of DME as defined in section 199.2 that are also medically necessary and appropriate are covered. There are some items that may serve a preventive purpose, but TRICARE has a very limited preventive benefit that is based on statute. Consequently, some of those items listed by the commenter do not meet coverage provisions.

Comment 22: A commenter stated that the Medicaid program makes no express reference to DME in contrast to the CMS. They continued to express that for the Medicaid program, the operative term is equipment. In their opinion, the TRICARE program continues to require covered DME to be ''primarily and customarily designed and intended to serve a medical purpose rather than primarily for transportation, comfort or convenience. The regulations also continue to prohibit coverage for ''luxury'' or ''deluxe'' items. These requirements appear out of step with the new statute's standard of maximizing function and preventing deterioration of function.

Response: Medicaid and TRICARE are separate programs each with their own governing statutes and provisions. Medical necessity is a requirement for the TRICARE program and the NDAA 02 statutory language must be read in conjunction with the existing medical necessity requirement. DME with deluxe, luxury, or immaterial features which increase the cost of the item to the government relative to a similar item without those features is excluded. *See* 32 CFR 199.4(d)(3)(ii)((D)(*3*).

Comment 23: A commenter opined that technology has blurred the line between what can legitimately be called a convenience or luxury and what improves the functionality of quality of life of the person, thereby improving his or her health status.

Response: We will allow DME that meets the definition described in this final rule, is medically or psychologically necessary, and meets all parameters of TRICARE coverage.

Comment 24: One commenter indicated that in the final rule, TRICARE should specifically address the issue of accessing power mobility before a long term manual wheelchair user is no longer able to propel him or herself due to secondary injury as a result of such wheelchair use.

Response: Current regulatory provisions (32 CFR 199.4(d)(3)(iv)(C)) cover a wheelchair, or a CHAMPUS approved alternative, which is medically necessary to provide basic mobility, including additional cost for medically necessary modifications to accommodate a particular disability. These may be covered as durable medical equipment. Additionally, the Policy Manual allows for electric-powered, cart-type transports as an alternative to an electric wheelchair. DME with deluxe, luxury, or immaterial features which increase the cost of the term to the government relative to a similar item without those features remains a TRICARE exclusion.

Comment 25: A commenter suggested that we change the current definition of DME to conform to CMS's definition of DME. CMS defines DME as equipment furnished by a supplier or a home health agency that—(1) Can withstand repeated use; (2) is primarily and

customarily used to serve a medical use; (3) generally is not useful to an individual in the absence of an illness or injury; (4) is appropriate for use in the home. Alternatively, the commenter suggested that TRICARE revise its definition of DME by deleting the wording ''* * * rather than primarily for transportation, comfort or convenience * * *'' and adding a separate criterion that DME ''generally is not useful to an individual in the absence of an illness or injury''.

Response: The proposed rule stated that we intended to modify the DME definition to incorporate the NDAA 02 language into the DME definition. The revised DME definition was proposed to read as follows: Equipment for which the allowable charge is over $100 and which:

(1) Is medically necessary for the treatment of a covered illness or injury;

(2) Improves, restores, or maintains the function of a malformed, diseased, or injured body part, or can otherwise minimize or prevent the deterioration of the patient's function or condition;

(3) Can maximize the patient's function consistent with the patient's physiological or medical needs.

(4) Is primarily and customarily designed and intended to serve a medical purpose rather than primarily for transportation, comfort, or convenience

(5) Can withstand repeated use;

(6) Provides the medically appropriate level of performance and quality for the medical condition present (that is, nonluxury or nondeluxe);

(7) Is other than spectacles, eyeglasses, contact lenses, or other optical devices, hearing aids (unless otherwise provided as a covered TRICARE benefit), or other communication devices (unless otherwise provided as a covered TRICARE benefit); and

(8) Is other than exercise equipment, spas, whirlpools, hot tubs, swimming pools or other such items.

When we received this comment, we reviewed both our current and proposed DME definition. It became clear to us that some of the criteria included in the definition were actually coverage criteria rather than criteria that identify DME. We then compared the current and proposed TRICARE definitions for DME to the definition used by CMS. Based on that side-by-side comparison, we decided to update our DME definition by adopting the same first three criteria listed in CMS's definition for use in TRICARE's definition as that these criteria have a crosswalk to criteria found in our current DME definition. We did not adopt the fourth criteria in the CMS definition regarding in-home use because it provides a restriction not currently found under the TRICARE program. Additionally, we moved the coverage criteria currently found in the DME definition at 32 CFR 199.2, to 32 CFR 199.4(d)(3)(ii)(A) which outlines the scope of the DME benefit. This final rule has been revised accordingly.

Misc. Comments/Admin Comments

Comment 26: A commenter expressed concern with the statement in the ''Regulatory Procedures'' section of the proposed rule stating that this regulation is ''not economically significant.'' They interpreted this to mean that the TRICARE program ''does not anticipate spending any more resources on this benefit category than the program did before this new law was adopted.''

Response: The language does not mean that the TRICARE program does not anticipate spending any more resources on this benefit category than the program did before the new law. The statement is a requirement in rulemaking under the Regulatory Flexibility Act (RFA). There are three specific RFA requirements applicable to rulemaking:

1. Analysis of the impact of each rulemaking on small entities and evaluation of alternatives that would accomplish regulatory objectives without unduly burdening small entities or erecting barriers to competition.

2. The periodic review of existing agency rules which have a significant economic impact on a substantial number of small entities.

3. Preparation and publication of a semiannual agenda listing rules under development that may have a significant economic impact on a substantial number of small entities.

Additionally, Executive Order 12866 requires that comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts.

Neither the RFA or Executive Order 12866 provide spending limits for these additional benefits and our statement in the proposed rule shall have no impact on the resources provided for this new benefit. TRICARE shall provide the benefits within the provisions outlined in this final rule.

Comment 27: Add ''Bob Stump'' in front of NDAA–03.

Response: Done.

Summary of Regulatory Modifications

The following modifications were made as a result of suggestions received during the public comment period:

(1) We revised the definition of ACD/SGD to comply with the statutory language. Additionally, we eliminated the specific criteria for an ACD/SGD and will be placing that into the TRICARE Policy Manual.

(2) We adopted a modified version of CMS's definition of DME and moved criteria found in the current DME definition to 32 CFR 199.4.

(3) We revised the definition of prosthetics to comply with the statutory language.

(4) We revised the definition of rehabilitative therapy to comply with the statutory language.

(5) We clarified that rehabilitative therapy are therapies that are medically necessary and appropriate, that are proven medical treatment, that are not considered custodial care, that are provided by an authorized TRICARE provider and that are not otherwise excluded as a TRICARE benefit may be considered for TRICARE coverage.

Regulatory Procedures

Executive Order 12866 requires that a regulatory impact analysis be performed on any economically significant rule. An economically significant rule is defined as one that would result in the annual effect on the national economy of $100 million or more, or have other substantial impact. The Regulatory Flexibility Act (RFA) requires that each Federal Agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities.

As previously mentioned this final rule is not a major rule under the Congressional Review Act, because its economic impact will be less than $100 million. The changes set forth in this final rule are revisions to existing regulation. The changes made in this final rule involve an expansion of TRICARE benefits. In addition, this final rule will have minor impact and will not significantly affect a substantial number of small entities. In light of the above, no regulatory impact analysis is required.

This final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 55).

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

■ Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 55.

■ 2. Section 199.2(b) is amended by revising the definitions of ''Durable medical eqiupment'', and ''Prosthetic devices (prosthesis)'', by adding definitions of ''Augmentative communication device'', ''Profound hearing loss'', ''Prosthetic'', ''Prosthetic supplies'', ''Rehabilitative therapy'', and ''Speech generating device'' in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Augmentative communication device (ACD). A voice prosthesis as determined by the Secretary of Defense to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. Also referred to as Speech Generating Device.

* * * * *

Durable medical equipment. Equipment that—

(1) Can withstand repeated use;

(2) Is primarily and customarily used to serve a medical purpose; and

(3) Generally is not useful to an individual in the absence of an illness or injury.

Profound hearing loss (adults). An ''adult'' (a spouse as defined in section 32 CFR 199.3(b) of this part of a member of the Uniformed Services on active duty for more than 30 days) with a hearing threshold of:

(1) 40 dB HL or greater in one or both ears when tested at 500, 1,000, 1,500, 2,000, 3,000, or 4,000Hz; or

(2) 26 dB HL or greater in one or both ears at any three or more of those frequencies; or

(3) A speech recognition score less than 94 percent.

Profound hearing loss (children). A ''child'' (an unmarried child of an active duty member who otherwise meets the criteria (including age requirements) in 32 CFR 199.3 of this part) with a 26dB HL or greater hearing threshold level in one or both ears when tested in the frequency range at 500, 1,000, 2,000, 3,000 or 4,000 Hz.

* * * * *

Prosthetic or Prosthetic Device (prosthesis). A prosthetic or prosthetic device (prosthesis) determined by the Secretary of Defense to be necessary because of significant conditions resulting from trauma, congenital anomalies, or diseases.

Prosthetic supplies. Supplies that are necessary for the effective use of a prosthetic or prosthetic device.

* * * * *

Rehabilitative therapy. Any rehabilitative therapy that is necessary to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient and prescribed by a physician.

* * * * *

Speech generating device (SGD). See Augmentative Communication Device.

* * * * *

■ 3. Section 199.3 is amended by revising paragraph (e) to read as follows:

§ 199.3 Eligibility.

* * * * *

(e) Eligibility Under the Transitional Assistance Management Program (TAMP). (1) Transitional health care benefits under TRICARE are authorized for the following eligibles:

(i) A member who is involuntarily separated from active duty and the dependents of the member.

(ii) A member of a reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is active duty for a period of more than 30 days and the dependents of the member.

(iii) A member who is separated from active duty for which the member is involuntarily retained under 10 U.S.C. 12305, is support of a contingency operation and the dependents of the member.

(iv) A member who is separated from active duty pursuant to a voluntary agreement of the member to remain on active duty for a period of less than one year in support of a contingency operation and the dependents of the member.

(2) Time period of eligibility. Transitional health care shall be available for a specified period of time for members and dependents beginning on the date which the member is separated as follows:

(i) For members separated with less than 6 years of active service, 60 days.

(ii) For members separated with 6 or more years of active service, 120 days.

* * * * *

■ 4. Section 199.4 is amended by revising paragraph (d)(3)(ii)(A), paragraph (d)(3)(vii), the text of paragraph (g)(41) preceding the note, paragraph (g)(47), paragraph (g)(51), by adding new paragraphs (e)(23), (e)(24), (e)(25), and by removing and reserving (g)(45) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(d) * * *

(3) * * *

(ii) * * *

(A) Scope of benefit. (*1*) Subject to the exceptions in paragraphs (d)(3)(ii)(B) and (d)(3)(ii)(C) of this section, only durable medical equipment (DME) which is ordered by a physician for the specific use of the beneficiary shall be covered.

(*2*) In addition, any customization of durable medical equipment owned by the patient is authorized to be provided to the patient and any accessory or item of supply for any such authorized durable medical equipment, may be provided to the patient if the customization, accessory, or item of supply is essential for—

(*i*) Achieving therapeutic benefit for the patient

(*ii*) Making the equipment serviceable; or

(*iii*) Otherwise assuring the proper functioning of the equipment.

(*3*) Further, equipment as defined in § 199.2 of this part and which:

(*i*) Is medically necessary for the treatment of a covered illness or injury;

(*ii*) Improves, restores, or maintains the function of a malformed, diseased, or injured body part, or can otherwise minimize or prevent the deterioration of the patient's function or condition;

(*iii*) Can maximize the patient's function consistent with the patient's physiological or medical needs;

(*iv*) Provides the medically appropriate level of performance and quality for the medical condition present (that is, nonluxury or nondeluxe);

(*v*) Is not otherwise excluded by this Regulation.

* * * * *

(vii) Prosthetics, prosthetic devices, and prosthetic supplies, as determined by the Secretary of Defense to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. Additionally, the following are covered:

(A) Any accessory or item of supply that is used in conjunction with the device for the purpose of achieving therapeutic benefit and proper functioning;

(B) Services necessary to train the recipient of the device in the use of the device;

(C) Repair of the device for normal wear and tear or damage;

(D) Replacement of the device if the device is lost or irreparably damaged or

the cost of repair would exceed 60 percent of the cost of replacement.

* * * * *

(e) * * *

(23) A speech generating device (SGD) as defined in § 199.2 of this part is covered as a voice prosthesis. The prosthesis provisions found in paragraph (d)(3)(vii) of this section apply.

(24) A hearing aid, but only for a dependent of a member of the uniformed services on active duty and only if the dependent has a profound hearing loss as defined in § 199.2 of this part. Medically necessary and appropriate services and supplies, including hearing examinations, required in connection with this hearing aid benefit are covered.

(25) Rehabilitation therapy as defined in § 199.2 of this part to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient when prescribed by a physician. The rehabilitation therapy must be medically necessary and appropriate medical care, rendered by an authorized provider, necessary to the establishment of a safe and effective maintenance program in connecti9n with a specific medical condition, and must not be custodial care or otherwise excluded from coverage.

* * * * *

(g) * * *

(41) *Hair transplants, wigs/hair pieces/cranial prosthesis.*

Note: * * *

* * * * *

(45) [Reserved]

* * * * *

(47) *Eye and hearing examinations.* Eye and hearing examinations except as specifically provided in paragraphs (c)(2)(xvi), (c)(3)(xi), and (e)(24) of this section, or except when rendered in connection with medical or surgical treatment of a covered illness or injury.

* * * * *

(51) *Hearing aids.* Hearing aids or other auditory sensory enhancing devices, except those allowed in paragraph (e)(24) of this section.

* * * * *

■ 4. Section 199.14 is amended by redesignating paragraphs (k) through (n) as (l) through (o) and by adding a new paragraph (k) to read as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(k) *Reimbursement of Durable Medical Equipment, Prosthetics, orthotics and Supplies 9DMEPOS).* Reimbursement of DMEPOS may be based on the same amounts established under the Centers for Medicare and Medicaid Services (CMS) DMEPOS fee schedule under 42 CFR part 414, subpart D.

* * * * *

Dated: September 28, 2004

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–22684 Filed 10–8–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–034]

RIN 1625–AA09

Drawbridge Operation Regulation; Tensas River, Clayton, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the draw of the Union Pacific Railroad bridge across the Tensas River, mile 27.2, at Clayton, Louisiana. The movable span of the bridge has been removed and the remains of the bridge are still in place. Since the movable span of the bridge has been removed, the regulation controlling the opening and closing of the bridge is no longer necessary.

DATES: This rule is effective October 12, 2004.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 500 Poydras Street, New Orleans, Louisiana 70130–3310, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Eighth District Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, at (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. Public comment is not necessary since the bridge that the regulation governed is out of service and mariners are no longer required to request an opening to transit through the bridge.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. There is no need to delay the implementation of this rule because the bridge it governs is already out of service and mariners are no longer required to request an opening.

Background and Purpose

The movable span of the railroad bridge across the Tensas River, mile 27.2, which had previously serviced the area has been removed and the remaining portions of the bridge presently remain in place. These remaining portions of the bridge will be removed in the near future or permitted to remain in place by the U.S. Army Corps of Engineers. Since the movable span has been removed, mariners are no longer required to request openings for the bridge. The regulation governing the operation of the bridge is found in 33 CFR 117.503(a). The purpose of this rule is to remove 33 CFR 117.503(a) from the Code of Federal Regulations since it governs a bridge that is no longer in service and the movable span has been removed.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This rule removes the special regulation for a bridge that is already out of service.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises

small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will have no impact on any small entities because the regulation being removed applies to a bridge that has already been taken out of service and will be removed.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g.≤ specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. This final rule only involves removal of the drawbridge operation regulation for a drawbridge that has been removed from service. It will not have any impact on the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Section 117.503 is revised to read as follows:

§ 117.503 Tensas River

The draws of the S15 bridge, mile 27.3 at Clayton, and the S128 bridge, mile 61.0 at New Light, shall open on signal if at least 48 hours notice is given.

Dated: September 27, 2004.

R.F. Duncan,

Rear Admiral, U. S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 04–22849 Filed 10–8–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7826–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, ''the Agency'' or ''we'' in this preamble) is granting a petition submitted by General Motors Corporation (GM) Lordstown Assembly Plant in Lordstown, Ohio, to exclude or ''delist'' up to 2,000 cubic yards of wastewater treatment sludge from the conversion coating on aluminum, RCRA hazardous waste F019, generated by its wastewater treatment plant from the lists of hazardous wastes contained in Subpart D of 40 CFR part 261.

After analysis, the EPA has concluded that the petitioned waste is not hazardous when disposed of in a Subtitle D landfill. Today's action conditionally excludes the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) only if the waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

EFFECTIVE DATE: This rule is effective on October 12, 2004.

ADDRESSES: The RCRA regulatory docket for this final rule, number R5–LRDTWN–04, is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call Judy Kleiman at (312) 886–1482 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Judy Kleiman at the address above or at (312) 886–1482.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in Title 40, Code of Federal Regulations (CFR) 261.11 and in the background document for the waste. A petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether any factors other than those for which the waste was listed warrant retaining it as a hazardous waste.

A generator remains obligated under RCRA to confirm that its waste remains nonhazardous even if EPA has ''delisted'' the waste.

B. What Regulations Allow a Waste To Be Delisted?

Under 40 CFR 260.20 and 260.22, a generator may petition the EPA to remove its wastes from hazardous waste control by excluding it from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste on a ''generator specific'' basis from the hazardous waste lists.

II. GM Lordstown's Delisting Petition

A. What Waste Did GM Lordstown Petition EPA To Delist?

In February, 1999 GM submitted a petition to exclude wastewater treatment sludge from the conversion coating of aluminum, RCRA hazardous F019, generated at its Lordstown Assembly Plant in Lordstown Ohio from the list of hazardous wastes contained in 40 CFR 261.31.

B. What Information Must the Generator Supply?

A generator must provide sufficient information to allow the EPA to determine that the waste does not meet any of the criteria for which it was listed as a hazardous waste, and that there are no other factors, including additional constituents, that could cause the waste to be hazardous. To support its petition, GM submitted descriptions and schematic diagrams of its manufacturing processes and the results of the chemical analysis of the petitioned waste.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

Today the EPA is finalizing an exclusion for up to 2,000 cubic yards of wastewater treatment sludge generated annually at the GM Lordstown Assembly Plant in Lordstown, Ohio.

GM petitioned EPA to exclude, or delist, the wastewater treatment sludge because GM believed that the petitioned waste does not meet the criteria for which it was listed and that there are no additional constituents or factors which could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). *See* section 222 of HSWA, 42 United States Code (U.S.C.) 6921(f), and 40 CFR 260.22(d)(2)–(4).

On June 25, 2004 EPA proposed to exclude or delist the wastewater treatment sludge generated at GM's Lordstown facility from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (65 FR 58015). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that the wastewater treatment sludge from GM's Lordstown facility should be excluded from hazardous waste control.

B. What Are the Terms of This Exclusion?

GM must dispose of the wastewater treatment sludge in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial waste. Any amount exceeding 2,000 cubic yards, annually, is not delisted under this exclusion. GM must verify on a quarterly basis that the concentrations of the constituents of concern do not exceed the allowable levels set forth in this exclusion. This exclusion is effective only if all

conditions contained in today's rule are satisfied.

C. When Is the Delisting Effective?

This rule is effective October 12, 2004. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This exclusion may not be effective in States having a dual system that includes Federal RCRA requirements and their own requirements, or in States which have received our authorization to make their own delisting decisions.

EPA allows States to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal and State programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some States to administer a delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If GM transports the petitioned waste to or manages the waste in any State with delisting authorization, GM must obtain a delisting from that State before it can manage the waste as nonhazardous in the State.

IV. Public Comments Received and EPA's Responses

Comments were received from Alliance of Automobile Manufacturers and General Motors, Worldwide Facilities Group. Both commenters were supportive of the proposed rule.

Comment: Commenter supports the proposed delisting and the current efforts of the Agency to develop a national solution to the F019 problem, recognizing that the process used by the automotive industry does not use the constituents of concern.

Response: The Agency is currently reviewing available data in order to assess how best to address the waste generated by zinc phosphating operations at automotive assembly plants.

Comment: Commenter expressed concern over the exceptionally long period of time required to delist this waste and urged the Region to expedite the final decision on this petition.

Response: The Region proceeded to prepare the final decision on this petition as soon as the comment period ended.

Comment: The version of the software used to evaluate a petition should be available to the public.

Response: The software initially used to evaluate this petition is available online. However, in the course of evaluating this petition, several errors were discovered in the software. Rather than wait until all errors could be identified and corrected in the software and the risk data could be updated, several allowable limits in this final rule were calculated manually. The software is currently being revised and an updated version will be available to the public again after data inputs have been updated and corrections have been made.

Comment: Total concentrations do not indicate the potential of a constituent to leach in a landfill and should not be used in setting allowable levels for this waste.

Response: Although total concentrations do not indicate leachability to groundwater, they are used to estimate potential risk from surface pathways including runoff to surface water, air dispersion, and volatilization in the plausible mismanagement scenario that the waste in the landfill is not always covered on a daily basis and that the surface water runoff is not always controlled.

Comment: The Alliance previously requested that EPA issue an interpretive rule to exclude this waste from the F019 classification. Because EPA did not act on the request or address the industry's concern, facilities have had to prepare costly and resource intensive individual petitions to delist this waste.

Response: The Agency is currently reviewing available data in order to assess how best to address the waste generated by zinc phosphating operations at automotive assembly plants.

Comment: EPA has not reduced the regulatory burden despite the pollution prevention efforts and the elimination of hexavalent chromium and cyanide from the waste.

Response: The Agency is reviewing the available data in order to assess how best to address the wastes generated by zinc phosphating operations at automotive assembly plants. The Agency must consider all factors including other constituents which could cause the waste to be hazardous.

Comment: By failing to address this concern, the EPA is penalizing the industry for the introduction of aluminum panels which could yield environmental benefits.

Response: EPA recognizes the value of introducing aluminum but must consider the presence of any constituent in the waste that could cause it to be hazardous. See above response.

V. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This rule does not impose an information collection burden under the provisions of the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: September 29, 2004.

Margaret M. Guerriero,

Director, Waste, Pesticides and Toxics Division.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of Appendix IX toPpart 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility/Address	Waste description
* * * * *	
General Motors Corporation Assembly Plant, Lordstown, Ohio	Waste water treatment plant sludge, F019, that is generated at General Motors Corporation's Lordstown Assembly Plant at a maximum annual rate of 2,000 cubic yards per year. The sludge must be disposed of in a Subtitle D landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted wastewater treatment sludge. The exclusion becomes effective as of (insert final publication date). 1. Delisting Levels: (A) The constituent concentrations measured in the TCLP extract may not exceed the following levels (mg/L): antimony—0.66; arsenic—0.30; chromium—5; lead—5; mercury—0.15; nickel—90; selenium—1; silver—5; thallium—0.28; tin—720; zinc—900; fluoride—130; p-cresol—11; formaldehyde—84; and methylene chloride—0.29 B) The total constituent concentration measured in any sample of the waste may not exceed the following levels (mg/kg): chromium—4,100 ; formaldehyde—700; and mercury—10. (C) Maximum allowable groundwater concentrations (μg/L) are as follows: antimony—6; arsenic—4.88; chromium—100; lead—15; mercury—2; nickel—750; selenium—50; silver—188; thallium—2; tin—22,500; zinc—11,300; fluoride—4,000; p-cresol—188; formaldehyde—1,390; and methylene chloride—5. 2. Quarterly Verification Testing: To verify that the waste does not exceed the specified delisting levels, GM must collect and analyze one waste sample on a quarterly basis using methods with appropriate detection levels and elements of quality control. 3. Changes in Operating Conditions: The facility must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. GM must handle wastes generated after the process change as hazardous until it has demonstrated that the wastes continue to meet the delisting levels and that no new hazardous constituents listed in appendix VIII of part 261 have been introduced and it has received written approval from EPA.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility/Address	Waste description
	4. Data Submittals: The facility must submit the data obtained through verification testing or as required by other conditions of this rule to U.S. EPA Region 5, Waste Management Branch, RCRA Delisting Program (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604. The quarterly verification data and certification of proper disposal must be submitted annually upon the anniversary of the effective date of this exclusion. The facility must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. The facility must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). 5. Reopener Language: (A) If, anytime after disposal of the delisted waste, GM possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in paragraph (1), then GM must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify the facility in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing GM with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. GM shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days GM presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.

* * * * *

[FR Doc. 04–22875 Filed 10–8–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3051, MB Docket No. 04–188, RM–9880]

Digital Television Broadcast Service; Glendive, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Glendive Broadcasting Corporation, substitutes DTV channel 10 for DTV channel 15 at Glendive. *See* 69 FR 30855, June 1, 2004. DTV channel 10 can be allotted to Glendive, Montana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 47–03–15 N. and 104–40–45 W. with a power of 30, HAAT of 152 meters and with a DTV service population of 23,000. With this action, this proceeding is terminated.

DATES: Effective November 15, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–188, adopted September 23, 2004, and released October 1, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 301–816–2820, facsimile 301–816–0169, or via-e-mail *joshir@erols.com*.

This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this [Report & Order etc.] in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Montana, is amended by removing DTV channel 15 and adding DTV channel 10 at Glendive.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–22882 Filed 10–8–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2146, MM Docket No. 01–135, RM–10154, RM–10326, RM–10327]

Radio Broadcasting Services; Bunkerville, Caliente, Laughlin, Logandale, NV; Mohave Valley, AZ; St. George, UT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a counterproposal to reallot and change the community of license for Station KZHK(FM), Channel 240C, St. George, UT, to Bunkerville, NV, and to upgrade, reallot, and change the community for Station KADD(FM) from Channel 228C1 at Laughlin, NV to Channel 288C at Logandale, NV. The also document also dismisses a proposal to allot Channel 291C2 at Caliente, NV, because neither the petitioner nor any other party filed a continuing expression of interest in the proposed allotment. Finally, the document dismisses a counterproposal to reallot and change the community of license for Station KPLD(FM), Channel 266C, from Kanab to Moapa, UT. *See* 66 FR 35768, July 9, 2001. *See also* **SUPPLEMENTARY INFORMATION.**

DATES: Effective January 5, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket 01–135, adopted September 1, 2004, and released September 3, 2004. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of the *Report and Order* in this proceeding in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

The reference coordinates for Channel 240C at Bunkerville, NV, and Channel 228C at Logandale, NV are 36–50–52 and 114–28–37, are 36–50–52 and . To accommodate these reallotments, the document (1) substitutes Channel 229A for vacant Channel Channel 240A at Mohave Valley, AZ, at reference coordinates 34–55–40 and 114–35–51; and (2) substitutes Channel 291C2 for Channel 228C2 at St. George, UT, at reference coordinates 36–50–49 and 113–29–28 and modifies the license for Station KSNN(FM) accordingly.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 240A and adding Channel 229A at Mohave Valley.

■ 3. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Bunkerville, Channel 240C, by removing Channel 228C1 at Laughlin and adding Logandale, Channel 228C.

■ 4. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 240C at St. George.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–22841 Filed 10–8–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 01–146; RM–9966; FCC 04–212]

Rules and Policies for Applications and Licensing of Low Power Operations in the Private Land Mobile Radio 450–470 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: In this document, the Commission addresses a petition for reconsideration of the *Report and Order* in this proceeding filed by the American Association of Paging Carriers (AAPC). AAPC requests that the Commission prohibit the licensing of stations on frequencies (or channels) 12.5 kHz removed from eight specific part 90 450–470 MHz band paging frequencies.

FOR FURTHER INFORMATION CONTACT: Scot Stone, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, at (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 04–212, adopted on September 1, 2004, and released on September 8, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In the Order, the Commission concludes that to the extent that the AAPC petition requests these offset channels be eliminated it is untimely filed. The Report and Order did not establish these channels; they have been available for years. Also, eliminating these channels was not an issue squarely raised in the context of the proceeding. In addition, we note that the Commission previously addressed the issue of whether to extend part 22 rules to reclassified part 90 services. A request to eliminate licensing of the subject eight offset channels would have been the proper subject of a reconsideration petition then or in the Reframing Report and Order when the

Commission decided to establish a new band plan for the PLMR 450–470 MHz band. Likewise, to the extent the AAPC petition indirectly challenges earlier Commission decisions it is also procedurally flawed because it is an impermissible collateral attack on final Commission decisions.

2. Additionally, the Commission declined to conform rules applicable to part 90 and part 22 CMRS operations.

I. Procedural Matters

A. Paperwork Reduction Act

3. The Order does not contain any new or modified information collection.

B. Final Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act (''RFA'') of 1980, as amended, an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Notice of Proposed Rulemaking* (''NPRM''). The FCC sought written public comment on the proposals in the NPRM, including comment on the IRFA. The present Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

II. Ordering Clauses

4. Accordingly, it is ordered that, pursuant to the authority of Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and section 1.115 of the Commission's Rules, 47 CFR 1.115, the petition for reconsideration filed by American Association of Paging Carriers is denied, and the proceeding is hereby terminated.

5. The Commission will not send a copy of this Order pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability. The Commission declined to change rules adopted in a previous proceeding.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–22742 Filed 10–8–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket OST–1999–6189]

RIN 9991–AA44

Definitions, Organization and Delegation of Powers and Duties

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule will implement the Services Acquisition Reform Act of 2003 (SARA), which amended the Office of Federal Procurement Policy Act to require each agency head to designate a Chief Acquisition Officer (CAO). The Secretary of Transportation designated the Deputy Secretary as CAO and also designated the Assistant Secretary of Administration as Deputy CAO. This rule will ensure proper accountability and responsibility of acquisition functions within the Department of Transportation (DOT).

EFFECTIVE DATE: October 12, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Wheeler, Office of the Senior Procurement Executive, M–60, (202) 366–4272, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 or e-mail to *Elaine.wheeler@ost.dot.gov.*

SUPPLEMENTARY INFORMATION: This rule updates the Code of Federal Regulations (CFR) section that sets forth authority delegated from the Secretary of Transportation to other Departmental officials, including the Assistant Secretary for Administration. This rule aligns 49 CFR Part 1 with the Office of Federal Procurement Policy Act (41 U.S.C. 414) (as amended by SARA, Pub. L. 108–136, Sect. 1421 (Nov. 24, 2003)).

The Federal Acquisition Regulation (48 CFR Part 2) defines the agency head as, among others, a ''chief official or assistant chief official of an executive agency'' and the ''Senior Procurement Executive'' as the individual responsible for the management direction of the acquisition system of the executive agency. Accordingly, this rule delegates to the Assistant Secretary for Administration the ability to carry out the duties and responsibilities of agency head for Departmental procurement and re-delegates this authority to DOT's Senior Procurement Executive. This authority excludes duties, responsibilities, and powers expressly reserved by statute or regulation.

Section 1421 of SARA amended the Office of Federal Procurement Policy Act to require the designation of a Chief Acquisition Officer (CAO) by the head of each executive agency. This rule reflects the Secretary's designation of the Deputy Secretary as DOT's CAO and the Assistant Secretary for Administration as the Deputy CAO, with the authority to re-delegate any CAO function. This rule also reflects the re-delegation to the Senior Procurement Executive, who resides within the Office of the Assistant Secretary for Administration, the authority to carry out the functions of agency head for departmental procurement, and the authority to carry out the functions of CAO, except for those expressly reserved for the Deputy Secretary in his role as CAO. Finally, this rule will reflect the issuance of DOT Order 1101.12B, dated May 17, 1999, which eliminated the Office of Acquisition and Grant Management, but retained the Senior Procurement Executive and some personnel.

This rule does not impose substantive requirements; it simply updates the CFR to accurately reflect the statutory and organizational posture of the Department. The rule is ministerial in nature and relates only to Departmental management, procedure, and practice as it relates to the acquisition function. Therefore, the Department has determined that notice and comment are unnecessary and that the rule is exempt from prior notice and comment requirements under 5 U.S.C. 553(b)(3)(A). These changes will not have substantive impact and the Department does not expect to receive substantive comments on the rule. Therefore, the Department finds that there is good cause under 5 U.S.C. 553 (d)(3) to make this rule effective upon publication pursuant to 5 U.S.C. 553(d)(2).

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

The final rule is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). There are no costs associated with this rule.

B. Executive Order 13132

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation and funding requirements do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose

substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Paperwork Reduction Act

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

■ 1. The authority citation for Part 1 is revised to read as follows:

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748; Pub. L. 107–71, 115 Stat. 597; Pub. L. 107–295, 116 Stat. 2064 (2002); Pub L. 107'296, 116 Stat. 2135 (2002); 41 U.S.C. 414.

■ 2. Revise § 1.24, paragraph (a) to read as follows:

§ 1.24 Authority.

(a) The Deputy Secretary: (1) May exercise the authority of the Secretary, except where specifically limited by law, order, regulation, or instructions of the Secretary; and (2) serves as the Chief Acquisition Officer.

* * * * *

■ 3. Amend § 1.59 by adding paragraphs (a)(5) and (6) to read as follows:

§ 1.59 Delegations to the Assistant Secretary for Administration.

* * * * *

(5) Carry out the duties and responsibilities of agency head for departmental procurement within the meaning of the Federal Acquisition Regulation. This authority as agency head for departmental procurement excludes duties, responsibilities, and powers expressly reserved for the Secretary of Transportation.

(6) Serve as Deputy Chief Acquisition Officer.

■ 4. Amend § 1.59a by revising paragraph (a) to read as follows:

§ 1.59a Redelegations by the Assistant Secretary for Administration.

(a) The Assistant Secretary for Administration has re-delegated to the Director, Office of the Senior Procurement Executive the authority to:

(1) carry out the duties and responsibilities of agency head for departmental procurement within the meaning of the Federal Acquisition Regulation except for those duties expressly reserved for the Secretary of Transportation.

(2) carry out the functions of the Chief Acquisition Officer except for those functions specifically reserved for the Deputy Secretary.

(3) procure and authorize payment for property and services for the Office of the Secretary, with power to re-delegate and authorize successive re-delegations.

* * * * *

Issued this 26th day of September, 2004 at Washington, DC.

Norman Mineta,

Secretary.

[FR Doc. 04–22743 Filed 10–8–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2004–18793]

RIN 2127–AJ39

Federal Motor Vehicle Safety Standards; Child Restraint Anchorage Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petition for reconsideration, correction.

SUMMARY: In August 2004, NHTSA denied a petition for reconsideration of a final rule amending Federal Motor Vehicle Safety Standard No. 225, *Child Restraint Anchorage Systems*. The denial made impermissible the installation of stowable anchorages on or after September 1, 2004. In response to a petition from Mercedes-Benz U.S.A., today's document provides manufacturers until March 1, 2005 to achieve non-stowability of the anchor system.

DATES: The amendments made in this rule are effective October 12, 2004.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Michael Huntley, Office of Crashworthiness Standards, NHTSA (telephone 202–366–0029).

For legal issues: Deirdre R. Fujita, Office of the Chief Counsel, NHTSA (telephone 202–366–2992).

You can reach both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION: On August 11, 2004, NHTSA published a final rule (69 FR 48818; Docket No. 18793) that provided the last of a number of planned responses to petitions for reconsideration of final rules establishing and amending Federal Motor Vehicle Safety Standard (FMVSS) No. 225, ''Child restraint anchorage systems'' (FMVSS No. 225, 49 CFR 571.225).[1] FMVSS No. 225 requires new vehicles to be equipped with child restraint anchorage systems consisting of two lower anchorage bars and a top tether anchor. Among other matters, the August 11, 2004 document denied a petition for reconsideration from Keiper GmbH & Co. (Keiper) to allow the installation of stowable lower anchorage bars past August 31, 2004.

NHTSA denied the request to allow stowable anchorage bars on a permanent basis out of a concern that a general use of these anchorage systems might impede efforts to achieve maximum compatibility between child restraint systems and the vehicle anchorage system. NHTSA acknowledged that stowable anchorages were being used by DaimerChrysler on limited models (69 FR 48821).[2]

On September 7, 2004, Mercedes-Benz U.S.A. (MBUSA) submitted a petition for reconsideration of the decision on the Keiper petition. MBUSA asked for an extension of time, to March 1, 2005, to comply with the agency's directive that lower anchorages cannot be stowable. MBUSA stated that its C-Class, CLK-Class and Maybach models are equipped with stowable anchorages and that the changes necessary to make

[1] The final rule establishing FMVSS No. 225 was published March 5, 1999 (64 FR 10786, docket 98–3390, notice 2). NHTSA responded to petitions for reconsideration of the final rule in documents published August 31, 1999 (64 FR 47566; Docket No. 6160), July 31, 2000 (65 FR 46628; Docket No. 7648), June 27, 2003 (68 FR 38208; Docket No. 15438; corrected 68 FR 54861), and August 11, 2004 (supra).

[2] DaimlerChrysler AG is the parent corporation of Mercedes Benz U.S.A. LLC.

their anchorages non-stowable (described below) will take until March 1, 2005 to implement, even when using the fastest possible implementation schedule. The manufacturer also stated that there have been no consumer complaints about the stowable system, which led MBUSA to believe that there would be no adverse safety consequence to extending the date to March 1, 2005.

Agency Decision

In a notice of proposed rulemaking that proposed to establish a new Federal motor vehicle safety standard mandating tire pressure monitoring systems (69 FR 55895, September 16, 2004, Docket 19054), NHTSA clarified some of the implications of submitting petitions for reconsideration of final rules. That discussion warrants repeating here. The agency carefully reviews the petitions it receives before deciding the appropriate response to a petition. While petitions are pending, the final rule is effective as originally promulgated. Manufacturers cannot assume that the agency will make the changes requested in their petitions. Accordingly, they must plan to comply with the final rule as issued, without reservation.

To allow manufacturers to do otherwise would be contrary to the public interest. The effective date of a final rule, and the societal benefits associated with it, cannot be delayed by the mere filing of petitions for reconsideration.

At the same time, NHTSA recognizes that it has a responsibility to provide a timely response to petitions. In the case at hand, the agency did not respond to the petition for reconsideration until only three weeks remained in the period during which the stowable anchorages were allowed. Further, in denying the petition, NHTSA did not assess the difficulty MBUSA would have in making its anchorages non-stowable at that late juncture.

In light of this, NHTSA has decided to allow vehicle manufacturers until March 1, 2005 to make necessary design changes and cease use of stowable anchorages. MBUSA stated in its petition that it has sought to make its anchorages non-stowable in the quickest time possible and that it cannot immediately achieve non-stowability of the anchorages. MBUSA said that it considered simply locking the anchorages in the extended position, but found this to be unfeasible because a portion of the anchorage is large enough to make use of the rear seat by adult occupants extremely uncomfortable. The manufacturer also considered locking in place smaller ''attachment clips,'' but found this too to be unfeasible because the smaller clips did not provide sufficient clearance for a child restraint fastener to extend fully over them. MBUSA believes that it must develop a new child restraint attachment assembly. The manufacturer stated that it needs to develop new tooling for the anchorage, change the tooling for the cross-member and produce a new welding tool. It also has to reduce the following aspects of production to the shortest amount of time: the technical clearance of design of the new anchorage assembly; feasibility testing; parts ordering; sample checking; manufacturing process; and delivery to the assembly line. MBUSA stated that the necessary modifications cannot be implemented before March 1, 2005.

The agency believes that the only quick fixes MBUSA could develop proved unworkable. Because a rapid fix is not available, MBUSA is expediting the development of a new child restraint attachment assembly. Extending the deadline to March 1, 2005 fairly implements the denial of the Keiper petition. Accordingly, the deadline is extended to March 1, 2005.

Correction

Although the August 11, 2004 denial of Keiper's petition intended to prohibit the installation of stowable anchorages past September 1, 2004, it is not evident from the regulatory text of FMVSS No. 225 that stowability of the anchorages after that date (which has been changed to March 1, 2005 by this document) is impermissible. To make that impermissibility clearer, the agency is adding a provision to S9.1.1 that specifies that the anchorage bars on vehicles manufactured on or after March 1, 2005 must not be stowable (i.e., foldable or otherwise stowable).

Effective Date

The agency is making today's amendment effective on publication. This final rule provides a 6-month period to meet the requirement that lower anchorages not be stowable. MBUSA could not now sell the three models of vehicles that have stowable lower anchorages if the amendments were not effective on publication. NHTSA thus finds for good cause to make this amendment effective in less than 180 days.

Rulemaking Analyses and Notices

a. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This document simply provides manufacturers (and MBUSA is the sole manufacturer using stowable bars) some time to render their lower anchorage bars non-stowable. Stowable anchorages have been permitted for a number of years and have not been used on a widespread basis. Vehicle manufacturers are unlikely to begin installing stowable bars in vehicles that do not now have them knowing that their installation would only be allowed until March 1, 2005. Based on our review of the potential impacts of this action, we have determined that this action is not significant within the meaning of the Department of Transportation's regulatory policies and procedures. We have further determined that the effects of this rulemaking do not warrant preparation of a full final regulatory evaluation.

b. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. This rule affects motor vehicle manufacturers, almost all of which are not small businesses. Even if there are motor vehicle manufacturers that qualify as small entities, this rule will not have a significant economic impact on them because it generally does not change the manufacturers' responsibilities to install non-stowable child restraint anchorage systems pursuant to FMVSS No. 225. This rule just provides more time in which to make stowable lower bars non-stowable. Accordingly, the agency has not prepared a regulatory flexibility analysis.

c. Executive Order 13132 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rulemaking will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Accordingly, NHTSA has determined that this rulemaking does not contain provisions

that have federalism implications or that preempt State law.

d. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This rulemaking does not impose any unfunded mandates as defined by that Act.

e. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA)(Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' The August 11, 2004 final rule addressed the NTTAA regarding NHTSA's decision to deny Keiper's petition on installing stowable anchorages on a permanent basis. There are no technical standards relating to the specific issue addressed by today's document.

f. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

g. Executive Order 12778 (Civil Justice Reform)

This rulemaking does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

h. Paperwork Reduction Act

This rule does not contain any collection of information requirements requiring review under the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

i. Viewing Docket Submissions

You may read the submissions received by Docket Management at Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590 (telephone 202–366–9324). You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the submissions on the Internet. Go to the Docket Management System (DMS) Web page of the Department of Transportation *(http://dms.dot.gov/)*.

Anyone is able to search the electronic form of all submission received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.225 is amended by adding S9.1.1(d) and republishing S9.1.1(e).

The added and republished paragraphs read as follows:

§ 571.225 Standard No. 225; Child restraint anchorage systems.

* * * * *

S9.1.1 The lower anchorages shall consist of two bars that—

* * *

(d) For bars installed in vehicles manufactured on or after March 1, 2005, the bars must not be capable of being stowable (foldable or otherwise stowable).

(e) [Reserved]

* * * * *

Issued on October 5, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–22851 Filed 10–8–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030912231–3266–02; I.D. 100504A]

Fisheries of the Northeastern United States; Scup Fishery; Adjustment to the 2004 Winter II Quota

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of scup Winter II quota adjustment and possession limit adjustment.

SUMMARY: NMFS adjusts the 2004 Winter II commercial scup quota and possession limit. This action complies with Framework Adjustment 3 (Framework 3) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), which implemented procedures to allow the rollover of unused commercial scup quota from the Winter I period to the Winter II period.

DATES: This rule is effective November 1, 2004 through December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail *sarah.mclaughlin@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS published a final rule in the **Federal Register** on November 3, 2003 (68 FR 62250), implementing Framework 3. Framework 3 implemented a process, for years in which the full Winter I commercial scup quota is not harvested, to allow unused quota from the Winter I period to be added to the quota for the Winter II period, and to allow adjustment of the commercial possession limits for the Winter II period based on the amount of quota rolled over from the Winter I period. Table 5 of the final 2004 quota specifications for summer flounder, scup, and black sea bass (69 FR 2074, January 14, 2004) presented detailed information regarding Winter II possession limits, based on the amount of scup to be rolled over from Winter I to Winter II.

For 2004, the Winter II quota is 1,967,825 lb (892,600 kg), and the best available landings information indicates that 2,249,527 lb (1,020,379 kg) remain of the Winter I quota of 5,568,920 lb (2,526,046 kg). Consistent with the intent of Framework 3, the full amount of unused 2004 Winter I quota is transferred to Winter II, resulting in a revised 2004 Winter II quota of 4,217,352 lb (1,912,978 kg). In addition to the quota transfer, the 2004 Winter II possession limit is increased, consistent with the rollover specifications established in the 2004 final rule (69 FR 2074), to 3,500 lb (1,588 kg) per trip to provide an appropriate opportunity for fishing vessels to obtain the increased Winter II quota.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 5, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–22839 Filed 10–6–04; 2:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 100504B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2004 pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 6, 2004, through 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 allowance of the pollock TAC in Statistical Area 610 of the GOA is 22,930 metric tons (mt) as established by the final 2004 harvest specifications for groundfish of the GOA (69 FR 9261, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2004 allowance of the pollock TAC in Statistical Area 610 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 22,850 mt, and is setting aside the remaining 80 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

After the effective date of this closure the maximum retainable amounts at 50 CFR 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the 2004 pollock TAC in Statistical Area 610.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 6, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–22840 Filed 10–6–04; 2:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 196
Tuesday, October 12, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 304

[Docket No. 02–086–2]

RIN 0579–AB54

Methyl Bromide; Official Quarantine Uses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule that would establish regulations to provide for the submission of requests by State, local, or tribal authorities for a determination whether methyl bromide treatments or applications required by the State, local, or tribal authorities to prevent the introduction, establishment, or spread of plant pests or noxious weeds should be authorized as official quarantine uses. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before November 12, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 02–086–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–086–1.
- *E-mail:* Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–086–1'' on the subject line.
- *Agency Web site:* Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on Docket No. 02–086–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. Gadh, Treatment Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737; (301) 734–6799.

SUPPLEMENTARY INFORMATION: On August 12, 2004, we published in the **Federal Register** (69 FR 49824–49829, Docket No. 02–086–1) a proposal to establish regulations to provide for the submission of requests by State, local, or tribal authorities for a determination whether methyl bromide treatments or applications required by the State, local, or tribal authorities to prevent the introduction, establishment, or spread of plant pests or noxious weeds should be authorized as official quarantine uses. The proposed rule would establish a process by which State, local, or tribal authorities could request and, if warranted, receive, a determination that their methyl bromide requirements should be authorized as official quarantine uses.

Comments on the proposed rule were required to be received on or before October 12, 2004. We are extending the comment period on Docket No. 02–086–1 for an additional 30 days, ending November 12, 2004. This action will allow interested persons additional time to prepare and submit comments

Authority: 7 U.S.C. 7719; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 6th day of October 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–22790 Filed 10–8–04; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AH44

Export and Import of Nuclear Equipment and Radioactive Materials: Security Policies; Notice of Public Meeting

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule; notice of public meeting.

SUMMARY: A public meeting will be held to discuss the Nuclear Regulatory Commission (NRC) proposed rule amending its regulations pertaining to the export and import of nuclear equipment and materials. The proposed rule was published in the **Federal Register** on September 16, 2004 (69 FR 55785). This rule implements recent changes to the nuclear and radioactive material security policies of the Commission and the Executive Branch. The meeting is open to the public and all interested parties may attend.

DATES: The public meeting will be held on Tuesday, October 19, 2004, from 10 a.m. to 12 noon. Should it become necessary to change the date or time of this meeting, the NRC will provide the revised information in a meeting notice posted on the NRC's public Web site at *http://www.nrc.gov/public-involve/public-meetings/meeting-schedule.html.*

ADDRESSES: The public meeting will be held at the Nuclear Regulatory Commission One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland, Room 1–F16.

The proposed rule, the regulatory analysis and any public comments received may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Publicly available documents related to this rulemaking may be viewed electronically on public computers in the NRC Public Document

Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Room O–1 F21, and open to the public on Federal workdays from 7:45 a.m. until 4:15 p.m. The PDR reproduction contractor will make copies of documents for a fee.

Publicly available NRC documents created or received in connection with this rulemaking are also available electronically via the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The proposed rule is available under ADAMS accession number ML042440237; the regulatory analysis is available under accession number ML0418404900. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at (800) 397–4209, (301) 415–4737 or by e-mail at *PDR@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Suzanne Schuyler-Hayes, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone (301) 415–2333, e-mail: *ssh@nrc.gov*.

SUPPLEMENTARY INFORMATION: New specific licensing and reporting requirements for certain exports and imports of nuclear and radioactive material will be discussed. The meeting is open to the public.

Dated at Rockville, Maryland, this 5th day of October 2004. For the Nuclear Regulatory Commission.

James W. Clifford,

Acting Deputy Director, Office of International Programs.

[FR Doc. 04–22784 Filed 10–8–04; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–CE–55–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (formerly the Piper Aircraft Corporation) Models PA–12, PA–12S, and PA–14 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) that would have applied to certain The New Piper Aircraft, Inc. (Piper) Models PA–12, PA–12S, and PA–14 airplanes that are equipped with F. Atlee Dodge Aircraft Services, Inc., Model 3140 long-range fuel tanks. The proposed action would have required removing all Model 3140 fuel tanks and restoring the wing panel assemblies to an approved type design configuration. Since issuance of the NPRM and after further review of all available information, including the comments received on the NPRM, the Federal Aviation Administration (FAA) has determined that the proposed rule as written should be withdrawn. This withdrawal does not prevent the FAA from initiating future rulemaking on this subject.

ADDRESSES: You may look at information related to this action at FAA, Central Region, Office of Regional Counsel, Attention: Rules Docket No. 90–CE–55–AD, 901 Locust, Room 506, Kansas City, Missouri 64106, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Ballenger, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4152; facsimile: (816) 329–4090; e-mail: *barry.ballenger@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

What action has FAA taken to date? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper Models PA–12, PA–12S, and PA–14 airplanes that are equipped with F. Atlee Dodge Services, Inc. Model 3140 fuel tanks. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 8, 1991 (56 FR 561). The action proposed to require removing all F. Atlee Dodge Service, Inc. Model 3140 fuel tanks and restoring the wing panel assemblies to the configuration defined by the original type design or approved under an applicable Supplemental Type Certificate.

Was the public invited to comment? The FAA invited interested persons to participate in the making of this amendment. The numerous comments we received fell in the following areas:

—Problems with F. Atlee Dodge Model 3140 fuel tanks.

—The adequacy of the installation procedures and instructions for the F. Atlee Dodge Model 3140 fuel tanks.

—The condition of the original tanks.

—The relationship between the Model 3140 fuel tank manufacturer and the FAA.

—The cost of the proposed action.

—The contents of the Malfunction and Defect report referenced in the NPRM.

—The strength and structural differences between the F. Atlee Dodge Model 3140 tanks and the original fuel tanks.

What is the FAA's final determination on this issue? The FAA evaluated all of these comments and all information related to this issue and determined that:

(1) An unsafe condition as defined in part 39 of the Federal Aviation Regulations (14 CFR part 39) does not exist on FAA-approved field installations of the F. Atlee Dodge Services, Inc. Model 3140 fuel tanks on Piper Models PA–12, PA–12S, and PA–14 airplanes; and

(2) The NPRM as currently written should be withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing future rulemaking on this issue, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Does this AD involve a significant rule or regulatory action? Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket No. 90–CE–55–AD, published in the **Federal Register** on January 8, 1991 (56 FR 561), is withdrawn.

Issued in Kansas City, Missouri, on October 4, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–22813 Filed 10–8–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 904

[Docket No. 040902252–4252–01; I.D. 092804C]

RIN 0648–AS54

Civil Procedures

AGENCY: Office of General Counsel for Enforcement and Litigation, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA is proposing amendments and technical refinements to its Civil Procedures which govern NOAA's administrative proceedings for assessment of civil penalties; suspension, revocation, modification, or denial of permits; issuance and use of written warnings; and release or forfeiture of seized property.

DATES: Submit comments on or before December 13, 2004.

ADDRESSES: Comments should be submitted in writing to Meggan Engelke-Ros, Enforcement Attorney, Office of General Counsel for Enforcement and Litigation, 8484 Georgia Avenue, Suite 400, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Meggan Engelke-Ros or Susan S. Beresford, 301–427–2202.

SUPPLEMENTARY INFORMATION:

I. Background

NOAA is proposing to amend the civil procedure rules that apply to its administrative proceedings as described below. NOAA is proposing the changes described herein to: (1) Conform the civil procedure rules to changes in applicable federal laws and regulations; (2) improve the efficiency and fairness of administrative proceedings; (3) clarify any ambiguities or inconsistencies in the existing civil procedure rules; (4) eliminate redundant language and correct language errors; and (5) conform the civil procedure rules to current agency practice.

II. Proposed Revisions

Subpart A—General

1. Purpose and Scope

Section 904.1: This section would be amended to add new statutory references: American Fisheries Act of 1998; Anadromous Fish Products Act; Antarctic Protection Act; Atlantic Coastal Fisheries Cooperative Management Act; Dolphin Protection Consumer Information Act; Driftnet Impact Monitoring, Assessment, and Control Act; Fish and Seafood Promotion Act of 1986; Fisherman's Protective Act of 1967; High Seas Fishing Compliance Act; North Pacific Anadromous Stocks Convention Act of 1992; Northwest Atlantic Fisheries Convention Act of 1995; Shark Finning Prohibition Act; South Pacific Tuna Act of 1988; and the Weather Modification Reporting Act. These additions would reflect statutes passed or amended since the last revision of these procedural regulations as well as statutes inadvertently left out of the current regulations. These statutes authorize NOAA to assess civil penalties and conduct seizures of property subject to forfeiture and, therefore, are subject to the application of this chapter of the Code of Federal Regulations.

Reference to the North Pacific Fisheries Act of 1954 was deleted because the statute is no longer in effect.

The proposed revision would also change ''Magnuson Fishery Conservation and Management Act'' to ''Magnuson-Stevens Fishery Conservation and Management Act'' to reflect the amendment to the title of that statute. (For consistency, references to ''Magnuson Act'' have been amended to ''Magnuson-Stevens Act'' throughout these regulations.) Likewise, the proposed revision would change ''National Marine Protection, Research, and Sanctuaries Act'' to ''National Marine Sanctuaries Act''.

2. Definitions

Section 904.2: The term ''ALJ Docketing Center'' is proposed for addition to the definitions section. The term ''authorized officer'' is proposed for addition to the definitions section. The definition of ''decision'' would be amended to coincide with the existing definitions of ''initial decision'' and ''final administrative decision''. A definition of the acronym ''NIDP would be added for clarity. A definition of the acronym ''NMFS'' would be added for clarity. A definition of the acronym ''NOPS'' would be added for clarity. A definition of the acronym ''PPIP'' would be added for clarity. The term ''settlement agreement'' would be added to the definitions section, and includes agreements providing for payment of civil penalties, eliminating the need for a separate definition of the term ''payment agreement'', which is deleted. A definition of the acronym ''USCG'' would be added for clarity. The term ''vessel owner'' would be revised to improve accuracy.

3. Filing and Service of Notices, Documents and Other Papers

Section 904.3: This section heading would be amended from ''Filing and service of documents'' to ''Filing and service of notices, documents and other papers'', to consolidate and distinguish procedures for service and filing of notices (NOVAs, NOPS, NIDPs) and other documents. (See § 904.202). During the review process, GCEL will be reviewing the technological issues related to the feasibility of e-transmission of documents. If the technology and procedures for e-transmission have developed to a point where they can be effectively utilized for notices and documents, GCEL will include the authority to permit e-transmission, which may include the further development of specific language to address the unique issues associated with e-transmission. Any comments on the viability of e-transmission for documents related to litigation are welcome.

4. Computation of Time Periods

Section 904.4: A new section, § 904.4, ''computation of time periods'', would be created from the present § 904.3(d) to explain the rules relating to computation of time periods that apply to notices and to other types of documents which are filed and served. The proposed rules relating to computation of time periods comport with those established by the Federal Rules of Civil Procedure.

5. Appearances

Section 904.5: A new section, § 904.5, ''Appearances'', would be created, replacing § 904.203, ''Appearances'', which would be eliminated. The new section would include the existing language of § 904.203, and add a new requirement that any attorney or other representative enter a written notice of appearance when representing a person regarding an Agency enforcement matter, or when representing a party in any civil administrative hearing.

Subpart B—Civil Penalties

1. Notice of Violation Assessment (NOVA)

Section 904.101: Paragraph (a) would be amended to delete redundant language in the first sentence pertaining to service of the NOVA, as this would be fully covered by the operative provisions of proposed § 904.3. The second sentence of § 904.101(a)(4) would be modified and designated as a new § 904.101(a)(5). No substantive change is intended by this revision.

2. Procedures Upon Receipt of a NOVA

Section 904.102: Paragraph (a)(3) would be amended for internal consistency to specify the appropriate cross-reference to the section of the rule concerning hearing requests.

Paragraph (a)(5) would be amended to clarify that, if a respondent takes no action, the NOVA would become a final administrative decision, in accordance with § 904.104.

In paragraphs (b) and (c), the phrase ''permit holder or vessel owner'' would be deleted, so that only the respondent has legal standing to seek amendment or modification of the NOVA, or to request an extension of time in which to respond to the NOVA. The sentence in paragraph (a)(5), allowing permit holders and vessel owners to respond to NOVAs, would be deleted so that only respondents may respond.

Paragraphs (e) through (g) would be deleted, as they would be fully covered by the proposed new and amended § 904.201(a)-(c).

3. Hearing and Administrative Review

Section 904.103: Paragraph (a) would be amended for internal consistency to specify the appropriate cross-reference to the section of the rule regarding the right to request a hearing upon receipt of a NOVA, § 904.102(a)(3).

The first sentence of paragraph (b) would be deleted as the requirement for an initial decision would be covered under amended § 904.271. The second sentence of paragraph (b) would be deleted to remove reference to the discretionary review process currently described in § 904.273, which would be deleted so that the Judge's decision (after consideration of any petition for reconsideration) would become the agency's final decision.

4. Final Administrative Decision

Section 904.104: Paragraphs (a) and (b) would be amended for internal consistency to specify the appropriate cross-reference to the section of the rule regarding submitting hearing requests, § 904.201(a).

5. Payment of Final Assessment

Section 904.105: Paragraph (a) would be amended to substitute ''Department of Commerce/NOAA'' for ''Treasurer of the United States'' to clarify that civil penalties are to be deposited to the Department of Commerce/NOAA account in the United States Treasury. Paragraph (b) would be amended to add the phrase ''or may commence any other lawful action'' to clarify that NOAA may pursue all lawful options for collecting an unpaid final civil penalty assessment. For example, NOAA may sanction a permit if the permit holder fails to pay a final assessment, pursuant to § 904.310, or the matter may be referred to a collection agency, or both. No substantive change is intended by this revision.

6. Compromise of Civil Penalty

Section 904.106: In paragraph (b) unnecessary language pertaining to the penalty compromise authority of NOAA would be deleted. For editorial consistency, the reference to the ''alleged violator'' would be changed to ''respondent''.

7. Joint and Several Respondents

Section 904.107: Paragraph (a) would be amended to clarify the extent of liability for civil penalties assessed against joint and several respondents.

Paragraph (b) would be amended to clarify and emphasize how a hearing request by a joint and several respondent would be processed.

Paragraph (d) would be added to specify that where Agency counsel has negotiated a settlement with one joint and severally liable respondent for less than the full amount of the proposed penalties and/or sanctions, then the remaining joint and several respondents would remain liable for the unsatisfied portion of the proposed penalties and sanctions.

8. Factors Considered in Assessing Penalties

Section 904.108: Paragraph (a) would be amended to reflect that NOAA will take into account a respondent's ability to pay when assessing a civil penalty for a violation of a statute NOAA administers, when the statute in question so requires.

Paragraph (e) would be amended to establish the appropriate time period for submission, to NOAA, of financial information on ability to pay. Proposed paragraph (e) would provide that the information should be provided within 60 days of the receipt of a Notice of Violation and Assessment. Paragraph (e) would also amend the deadline for submitting verifiable financial information when the respondent has requested an administrative hearing, and would like ability to pay to be considered by the administrative law judge. Under this paragraph, if a respondent produces financial information relating to ability to pay for the first time at hearing, then Agency counsel would have 30 days following the conclusion of the hearing to review and respond to the respondent's information.

Two minor editorial changes would be made in paragraph (g). No substantive change is intended by these revisions.

Changes proposed for paragraph (h) would clarify that the Agency is required to submit information to the Judge regarding the respondent's ability to pay only in those cases where the respondent has requested a hearing under a statute that requires NOAA to take into consideration a respondent's ability to pay when assessing a penalty.

Subpart C—Hearings and Appeal Procedures

Subpart C governs the procedures for hearings and appeals, including case docketing, the filing of documents, the duties and powers of judges, evidentiary matters, discovery, post-hearing matters, and the process for filing administrative appeals.

General

1. Scope and Applicability

Section 904.200: Paragraph (a) would be amended to substitute ''final administrative decisions'' for ''final decisions'' to reflect the proposed amended definition of ''Decision'' in § 904.2.

Paragraph (b) would be amended to delegate authority to the Judges to make initial and final decisions, and to take other actions related to the conduct of hearings, without that authority being subject to the administrative direction of the Chief Administrative Law Judge. This paragraph would also be amended to substitute ''final administrative decisions'' for ''final decisions'' to reflect the proposed amended definition of ''decision'' in § 904.2.

2. Hearing Requests and Case Docketing

Section 904.201: The heading would be amended to include reference to hearing requests. For clarity and brevity, paragraph (a) would be added to incorporate the language currently found at § 904.102(e) and would apply the procedures for requesting a hearing on a NOVAs, NIDPs and NOPSs. ''Notice'' would be substituted for ''NOVA'' for consistency with this revision.

Paragraph (b) would be added to incorporate and revise the language currently found at § 904.3(e) and § 904.102(f), which have been proposed for deletion. Under the proposed addition, the 10–day period following the deadline for filing hearing requests and other documents would no longer apply to all filings, but only to hearing requests. Further, under the proposed addition, all hearing requests filed within this 10–day period would be considered timely filed. Hearing requests filed after the 10–day period

would be forwarded to the Office of Administrative Law Judges, where they would be deemed untimely. The applicant would be notified in writing that the hearing request was untimely. The proposed revision would eliminate the Administrative Law Judge's authority to grant requests to extend the time for hearing requests and Agency counsel's discretion to deny hearing requests within the 10–day period.

Paragraph (c) would be added to incorporate the language of existing paragraph 904.102(g), which is proposed for deletion. This paragraph has been revised to allow any written communication from a respondent to be treated as a request for a hearing, at Agency counsel's discretion.

Paragraph (d) would be added to incorporate the language of existing § 904.201, with no revisions.

3. Filing of Documents

Section 904.202: Paragraph (a) would be amended to remove reference to the discretionary review process currently described in § 904.273, which would be deleted so that the Judge's decision (after consideration of any petition for reconsideration) would become the agency's final decision.

4. Appearances

Section 904.203: This section is proposed for deletion. A new section, ''Appearances'', is proposed at § 904.5.

5. Duties and Powers of Judge

Section 904.204: The introductory paragraph would be amended to substitute ''render'' for ''make the'', for consistency with the language of § 904.271.

Paragraphs (b)-(o) would be redesignated as paragraphs (c)-(p). New paragraph (a) would be added to authorize the Judge to rule on the timeliness of hearing requests pursuant to proposed amended § 904.201(b).

New paragraph (q) would be added to authorize the Judge to impose sanctions on any party, or a party's representative, for failure to comply with this part, or any order issued under this part. Sanctions may only be issued if the failure to comply materially injures or prejudices another party; is a clear and unexcused violation of this part, or any order issued under this part; or unduly delays the proceeding. Sanctions may be imposed upon the motion of any party or *sua sponte*.

Paragraph (q)(3) would provide that notice and an opportunity to be heard will be provided prior to the imposition of all sanctions, other than refusal to accept late filings.

Paragraph (q)(4) would provide that imposition of sanctions is subject to interlocutory review under § 904.254.

These amendments are intended to improve the fairness and efficiency of adjudicatory proceedings and comport with the civil procedures of other federal agencies.

6. Pleadings, Motions, and Service

Section 904.206: Paragraph (a) would be amended to substitute ''Judge'' for ''Office of Administrative Law Judges'' and to add ''ALJ Docketing Center''. This proposed revision would promote efficiency because it would eliminate the need for the ALJ Docketing Center to forward pleadings to the Judges assigned to cases. A technical revision would also be made for internal consistency to specify the appropriate cross-reference to the new section of the rule, which would be § 904.3(b).

7. Amendment of Pleading or Record

Section 904.207: This section would be amended to create new paragraph (a) which would allow parties to amend their pleadings until 20 days prior to a hearing without receiving permission from a Judge, thus easing the hardship associated with amending a pleading. Within 20 days of a hearing, parties could amend a pleading only by leave of a Judge, or with the written consent of the adverse party, thereby facilitating non-contested amendments. The proposed revision would require that Judges provide leave to amend pleadings when justice so requires. Under the proposed revision, parties could also file responsive pleadings within the time that remains for responding to the original pleading, or within 10 days after service of the amended pleading, whichever time period is longer, unless otherwise ordered by a Judge.

Paragraph (b) would added based on language currently found in § 904.207, with a proposed amendment to remove the Judge's discretion to permit a party to amend a pleading to make a more definite statement upon conditions fair to both parties. The Judge's authority to permit an amendment of the pleadings for any reason, including to make a more definite statement, would be governed by revised § 904.207(a).

Paragraph (c) would be created from language currently found in existing § 904.207, with a proposed amendment to emphasize that the Judge has broad discretion to allow corrections of harmless errors in pleadings and elsewhere in the record.

8. Expedited Proceedings

Section 904.209: This section would be amended to allow expedited hearings to be scheduled no earlier than five business days, rather than three days, after notice that an expedited hearing is granted, unless all parties consent to an earlier date. This proposed amendment would allow parties more time to prepare their cases for hearing than the current rule provides, although both the current and proposed rule allow the parties to agree to an earlier hearing date.

9. Failure to Appear

Section 904.211: Paragraph (a) would be amended to reflect the fact that, when a party appears at the hearing and no party appears for the opposing side, the Judge is authorized to dismiss the case or to find the facts as alleged in the NOVA and enter a default judgment against the non-appearing party. By authorizing the Judge to enter a default judgment when a party has failed to appear, the proposed amendments would create a disincentive for a party to fail to appear at a hearing once one has been requested and avoid the attendant expenses associated with putting on such hearings.

A new paragraph (b) would be added to allow a party to petition the Judge for reconsideration of a default judgment in accordance with § 904.272. Only petitions citing reasons for non-appearance will be considered.

Existing paragraphs (b) and (c) would be redesignated as (c) and (d).

A new paragraph (e) would be added to clarify that failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Judge's decision.

10. Failure to Prosecute or Defend

Section 904.212: This section would be amended to describe certain orders that the Judge may issue to bring about the efficient resolution of a case. Specifically, the amendments would clarify that the Judge may, whenever the record indicates that either party does not intend to participate further in the proceeding, issue an order requiring the party to show why the case should not be disposed of adversely to that party's interests or to certify the party's intention to appear at a scheduled hearing.

11. Settlements

Section 904.213: This section would be amended to require the Judge to remove a case from the docket upon notification by the Agency that a settlement has been reached, if settlement is reached before the record

is certified. The proposed revision would clarify that Judges do not have the authority to approve or disapprove settlement agreements reached by the parties.

12. Prehearing Conferences

Section 904.216: Paragraph (a) would be amended to require Judges to give the parties at least twenty-four hours notice prior to requiring the parties to appear for a conference or to participate in a telephone conference, and would require that all conferences be recorded. Paragraph (a)(7) would be amended to emphasize that the Judge may hold a conference to discuss the status of any settlement discussions.

Paragraph (b) would be amended to require Judges to provide a transcript of pre-hearing conferences upon the request of the parties. The proposed amendment would provide the parties with accurate records of issues raised and matters decided during such conferences.

Discovery

1. Discovery Generally

Section 904.240: Paragraph (a) would amend the PPIP content and filing requirements. This section would list the information required to be submitted in a PPIP, and would include a new requirement that Respondents must list all defenses, together with a summary of all facts and law in support of each defense. This section would require the signature of the party and any attorney retained, and would require that copies of any exhibits listed be sent to the other parties. As the PPIP is the main tool of discovery in NOAA administrative proceedings, these requirements would further the purposes and goals of discovery. This proposed revision would also make two technical changes. The first change would be to move the text concerning the consequences of failing to provide the required information in a PPIP to paragraph (f) and the second would be to eliminate the cross-reference to § 904.212.

2. Interrogatories

Section 904.242: The title of this section would be amended from ''Interrogatories to parties'' to ''Interrogatories''. This change is proposed because the title was redundant.

Paragraph (b) would be amended to require the signature of a party on answers and the signature of a party or attorney on objections. This proposed amendment would bring the language more in line with language of the Federal Rules of Civil Procedure.

Hearings

1. Notice of Time and Place of Hearing

Section 904.250: Paragraph (a) would be amended to emphasize that the Judge is responsible for scheduling the hearing and giving proper notice to the parties. This proposed revision would also strike the words ''except in extraordinary circumstances'' in regards to having a hearing in less than 20 days after notice has been given, and add the words ''unless the hearing is expedited as provided under § 904.250(c)''.

Paragraph (b) would be amended to delete language in the first sentence that would appear in proposed § 904.250(a). This paragraph would also be revised to clarify that the Judge has authority to change the date, time, or place of the hearing.

Paragraph (c) would be amended to eliminate provisions pertaining to telephonic testimony as those provisions would now appear at § 904.251(c).

New paragraph (d) would state the procedures for expedited hearings.

2. Evidence

Section 904.251: Paragraphs (a), (b) and (d) would be redesignated as sub-paragraphs (a)(1) through (a)(3).

New paragraph (b), ''Objections and offers of proof'', would be added to specify the procedures for stating objections to the admission or exclusion of evidence.

New paragraph (c), ''Testimony'', would be added to specify the general requirements for receiving testimony into evidence.

New paragraph (d) would be added to address procedures for processing exhibits and documents.

Former paragraphs (e) and (f) would be combined and incorporated in a new paragraph (i), covering issues and procedures pertaining to proof of foreign law.

Replacement paragraph (e)(1) would specify that photographs, videotapes, etc. may be substituted for physical evidence at the discretion of the Judge. Replacement paragraph (e)(2) would specify when physical evidence will be retained by NOAA after a hearing. Replacement paragraph (f) would govern admission of stipulations.

New paragraph (g) would specify procedures governing when and how the judge could take official notice of certain matters.

New paragraph (h) would establish procedures to be administered by the judge governing parties' access to documents containing classified, confidential, or sensitive information.

3. Witnesses

Section 904.252: Paragraph (a), regarding the right to have personal counsel, would be redesignated as paragraph (b), with a new subheading but no substantive revisions.

Paragraph (b), concerning witness exclusion, would be redesignated as paragraph (c). The redesignated paragraph would allow an authorized officer to be considered a party for the purpose of applying the witness exclusion rule.

Paragraph (c) would be redesignated as paragraph (a) regarding witness fees and would be amended to clarify when and on what basis witness fees would be paid.

Paragraph (d) would be redesignated as paragraph (f). A new paragraph (d) ''Oath or affirmation'' would be added to specify that witnesses must testify under oath.

Paragraph (e) ''Failure or refusal to testify'' would be added to describe the actions the Judge may take in the event that a witness fails or refuses to testify.

Redesignated paragraph (f) was amended to clarify that the use of a court-certified interpreter is not mandatory, but is preferable.

4. Closing of Record

Section 904.253: This section would be redesignated as § 904.254, ''Interlocutory review''.

A new § 904.253 would be added, entitled ''Closing of record''. The new section would require that, once the Judge closes the record, the record may only be reopened for good cause shown and that any approved corrections to the transcript be reflected in the record.

5. Interlocutory Review

Section 904.254: Current § 904.254 would be redesignated as § 904.255 ''*Ex parte* Communications''. Redesignated § 904.254 would be titled ''Interlocutory Review''.

The redesignated § 904.254 would be amended to provide more specific procedures and expand the bases for granting interlocutory appeal. The party opposing interlocutory appeal would be granted 20 days to file its response, instead of 10 days.

6. Ex Parte Communications

Section 904.254: This section would be redesignated as § 904.255 and amended for clarity. New paragraph (e) would be added to allow the presiding judge to require any party who has made an *ex parte* communication to show cause why its claim should not be dismissed or otherwise adversely affected as a result of making the communication. New paragraph (f)

would be added to explain when the prohibitions of this rule shall apply.

Post-Hearing

1. Recordation of Hearing

Section 904.260: Paragraph (a) would be redesignated as paragraph (b) and would be amended to require that the Agency assume the cost of all hearing transcripts provided to both Agency and non-Agency parties. This proposed amendment would codify the Agency's current practice of providing Respondents with hearing transcripts at the Agency's expense.

Paragraph (b) would be redesignated as paragraph (c) with no substantive revisions.

New paragraph (a) would clarify that all hearings must be recorded.

2. Post-Hearing Briefs

Section 904.261: Paragraph (a) has been amended for clarity and reorganized into paragraphs (a) and (b).

Existing paragraph (b) would be redesignated as new paragraph (c), and amended to state that a party may request that proposed findings and conclusions, and reasons in support, be presented orally at the close of the hearing. This proposed revision would promote prompt decisions by the Judges, and the reduction of post-hearing costs to the parties in administrative cases.

3. Documents, Copies and Exhibits

Section 904.262: This section would be deleted. However, many of its provisions would be retained in the proposed revision to § 904.251.

Decision

1. Record of Decision

Section 904.270(c) would be amended and redesignated as § 904.253, entitled ''Closing of record''.

2. Initial Decision

Section 904.271: The title of this section would be changed from ''Decision'' to ''Initial Decision'' to conform with the new definition of ''Initial Decision'' in amended § 904.2.

Paragraph (a)(1) would be amended by striking a redundant and unnecessary reference to proposed findings or conclusions presented by the parties.

Paragraph (a)(2) would be amended to delete a requirement that the Initial Decision must contain a statement of the facts noticed or relied upon in the decision. The requirement is already covered under paragraph (a)(1), which requires that the decision include findings and conclusions ''on all material issues of fact''.

Paragraph (a)(3) would be amended to delete the catch-all requirement that the Initial Decision include ''[s]uch other matters as the Judge considers appropriate'' and substitute a new, specific requirement that the decision set forth the date upon which the decision will become effective.

New paragraph (a)(4) would be added to require that the Initial Decision include a statement of the further right of appeal.

Paragraph (d) would be reorganized and amended for clarity. In addition, this paragraph would be amended to remove reference to the discretionary review process currently described in § 904.273, which would be deleted so that the Judge's decision (after consideration of any petition for reconsideration) would become the agency's final decision.

3. Petition for Reconsideration

Section 904.272(a): This paragraph would be amended to allow the Judge to specify in an initial decision that a party may not file a petition for reconsideration of an order or initial decision. The proposed revision substitutes ''initial decision'' for ''decision'' throughout this section to comport with the new definition of ''initial decision'' in amended § 904.2. Under the proposed revision, petitions must state with particularity the alleged errors and relief sought. The proposed revision would provide that the filing of a petition for reconsideration will operate as a stay of an order or initial decision, or its date of effectiveness, unless ordered by the Judge. This revision is intended to avoid petitions for reconsideration becoming moot and, where appropriate, avoid permit sanctions and/or civil penalties going into effect prior to the Judge's ruling on a petition for reconsideration.

Section 904.272(d): This paragraph would be amended to remove reference to the discretionary review process currently described in § 904.273, which would be deleted so that the Judge's decision (after consideration of any petition for reconsideration) would become the agency's final decision.

4. Administrative Review of Decision

Section 904.273: This section would be deleted so that the Judge's decision (after consideration of any petition for reconsideration) would become the agency's final decision. Currently, this section provides an opportunity to petition the Administrator for review of the Judge's decision. Review by the Administrator is discretionary and only available in four limited circumstances. See 15 CFR 904.273(b). Therefore, the Administrator must make the preliminary determination that the necessary circumstances exist before reaching any decision on the merits of the petition. During the five-year period ending September 30, 2003, the Administrator found that one petition for review met the regulatory criteria. When granted, discretionary review is conducted on the record, without any opportunity for oral argument. In contrast, appeals to Federal District Court can provide a Respondent with increased opportunities to bring and present their case. Respondents currently have the option of appealing a Judge's decision directly to Federal District Court; that option was employed twice during this five-year period. Requiring all appeals to proceed directly to Federal District Court would bring cases to resolution in a more timely manner, while preserving the Respondent's opportunity for appeal.

Subpart D—Permit Sanctions and Denials

General

1. Scope and Applicability

Section 904.300: Paragraph (a) would be amended to delete the list of reasons for suspension, revocation, modification, and denial of permits, because these reasons are specified in § 904.301.

Paragraph (b) would be amended to eliminate reference to regulations that have been repealed.

2. Bases for Sanctions or Denials

Section 904.301: Paragraph (a) would be amended to clarify that additional bases for sanctioning or denying permits may be authorized by statute. Paragraphs (a)(2) and (a)(3) would receive minor editorial revisions. New paragraph (a)(4) would be added to clarify that failure to comply with the terms of a settlement agreement can constitute grounds for a permit sanction. This amendment is intended to promote compliance with settlement agreements.

Paragraph (b) would be amended for clarity, including by specifying that a permit sanction may apply to a successor in interest to the permit, as authorized by statute. The term ''fishery conservation zone'' would be amended to ''Exclusive Economic Zone''.

Paragraph (c) would be amended for clarity. The sanction of a vessel permit is not extinguished by sale or transfer of the vessel, or change in ownership of the vessel, and remains in effect until lifted by NOAA.

3. Notice of Permit Sanction (NOPS)

Section 904.302: Paragraph (a) would be amended to delete reference to service of a NOPS by registered mail. A NOPS must be served personally or by certified mail, return receipt requested.

4. Notice of Intent to Deny Permit (NIDP)

Section 904.303: This section would be amended to describe the bases for denying permits.

5. Opportunity for Hearing

Section 904.304: Paragraphs (a) would be amended to provide the appropriate cross-reference to § 904.201, Hearings. The provisions of paragraph (c) have been incorporated into new § 904.305(a) and (b) and § 904.201(a). Paragraph (d) would be deleted as it was determined to be unnecessary.

Sanctions for Noncompliance

The heading would be amended to accurately describe the section.

6. Nature of Sanctions

Section 904.310: Paragraph (a) would be amended to clarify that NOAA may also ''modify, or deny'' a permit. Paragraph (a)(1) would be revised to provide that permits may be suspended for noncompliance with any term of a settlement agreement, including failure to pay a civil penalty, until the respondent comes into compliance.

Paragraph (b) would be revised to add ''Stevens'' in order to correctly identify the Magnuson-Stevens Fishery Conservation and Management Act.

7. Compliance

Section 904.311: Paragraph (b) would be amended to delete unnecessary language.

Sanctions for Violations

8. Nature of Sanctions

Section 904.320: Paragraph (c) would be revised to add ''Stevens'' in the second sentence in order to correctly identify the Magnuson-Stevens Fishery Conservation and Management Act.

9. Reinstatement of Permit

Section 904.321: Paragraph (b)would be revised to delete unnecessary language.

Subpart E—Written Warnings

1. Procedures

Section 904.402: Paragraph (e) of this section would be eliminated, to conform to current agency practice. The requirement that enforcement officers note written warnings for certain violations on the permits of vessels used in those violations was found to be impractical. Service of a written warning upon a violator, in accordance with the regulations set out in subpart A, of these regulations is the most commonly used procedure and best ensures compliance with due process interests.

2. Review and Appeal of a Written Warning

Section 904.403: This section would be revised to delete the current provisions of § 904.403. Currently, the provisions of § 904.403(a) provide that persons who receive written warnings from enforcement agents may seek review of the written warning within 90 days by the appropriate NOAA Regional Attorney. Under current § 904.403(b), if a person receives a written warning from a Regional Attorney or staff attorney, or receives a decision from a Regional Attorney affirming a written warning, an appeal of the written warning or decision may be filed with the NOAA Assistant General Counsel for Enforcement and Litigation within 30 days of receipt of the written warning or Regional Attorney's decision. The current provisions of § 904.403 provide that appeals of written warnings issued by enforcement agents must be in writing and must explain or deny the violation described in the warning.

In the proposed revision, the term ''enforcement agent'' would be replaced by ''authorized officer'', a term defined at amended § 904.2, to accurately describe all persons, other than Agency counsel, who may issue written warnings. The proposed revisions provide that persons receiving written warnings issued by authorized officers may seek review by Agency counsel and must file the request for review within 60 days of receipt of the written warning with the Assistant General Counsel for Enforcement and Litigation. The proposed revisions also provide that written warnings issued by Agency counsel, and determinations from Agency counsel affirming written warnings issued by an authorized officer, must be filed with the NOAA Deputy General Counsel within 60 days of receiving the written warning or affirmation of the written warning. The addresses for the Assistant General Counsel and the Deputy General Counsel are provided in the proposed revision. The proposed revisions specify that the requirement for filing a written explanation or denial when appealing or requesting review of a written warning applies both to written warnings issued by authorized officers and those issued by Agency counsel. For purposes of accuracy, the proposed revisions would allow the reviewing or appellate authority to ''vacate'', rather than ''expunge'', a written warning.

The proposed process for appealing written warnings reflects the reorganization of the management structure of NOAA's Office of the General Counsel. Prior to the reorganization, the staff attorneys in NOAA's regional offices who handled enforcement cases were supervised by Regional Attorneys. Currently, the Assistant General Counsel for Enforcement and Litigation (AGCEL) supervises all enforcement attorneys nationwide. The AGCEL is supervised by the NOAA Deputy General Counsel. The proposed revision would also result in a more uniform process for written warnings. Under the proposed rule, the period of time for appealing or seeking review of written warnings would be changed from 90 days for a written warning issued by an authorized officer, and 30 days from a written warning issued by Agency counsel, to a uniform 60–day period.

Subpart F—Seizure and Forfeiture Procedures

1. Purpose and Scope

Section 904.500: Paragraph (a) would be amended to add ''abandonment'', ''remission of forfeiture'', and ''return'' to the list of procedures governed by this provision. These changes would be made to more accurately reflect the activities governed by this section.

2. Notice of Seizure

Section 904.501: This section would be amended to comport with the new notice requirements dictated by the Civil Asset Forfeiture Reform Act of 2000 (Public Law 106–185 enacted August 23, 2000; 18 U.S.C. 981 *et seq.*). The proposed new language reflects the CAFRA requirement that a federal government agency seizing property must notify, within 60 days from the date of the seizure, all parties who may have an interest in the seized property of their right to file a claim to that property. Such notice shall be by registered or certified mail. In cases where the property is seized by a state or local law enforcement agency, notice is required to be given in the above manner within 90 days from the date of the seizure. The notice must describe the seized property and state the time, place and reason for the seizure, including the provisions of law alleged to have been violated. The notice must inform each interested party of four options: a) file a claim to the seized property; b) consent to delay the timely institution of judicial or administrative

forfeiture proceedings; c) apply for remission of the forfeiture; or d) voluntarily forfeit the property by abandonment. The notice may be combined with a notice of the sale of perishable fish issued under § 904.505. If a claim is filed, the case will be referred promptly to the U.S. Attorney for institution of judicial proceedings. The U.S. Attorney will then have 90 days from the date the claim is filed to institute forfeiture proceedings.

3. Bonded Release of Seized Property

Section 904.502: This section would incorporate provisions currently found in § 904.506 and eliminate cross-references to § 904.506 since they would now be consolidated herein. The proposed revision would consolidate all of the provisions relating to the release of seized property. The proposed revision would also clarify that not all applicable statutes authorize bonded release of seized property.

4. Administrative Forfeiture Proceedings

Section 904.504: In accordance with 16 U.S.C. 1607(a)(1), this section would be amended to change the threshold amount for administrative forfeitures from $100,000 to $500,000.

Paragraph (b) would be amended to comport with the Civil Asset Forfeiture Reform Act of 2000 (Public Law 106–185 enacted August 23, 2000; 18 U.S.C. 981 *et seq.*) and for clarity. Paragraph (b)(3) would be amended to eliminate the requirement of providing a cost bond. Paragraph (b)(2) would be amended to specify that the notice of proposed forfeiture will include the provisions of law allegedly violated. Provisions currently found in § 904.506 would be consolidated into this section at (b)(4) to the procedures for a declaration of forfeiture, including the notice required for a declaration of forfeiture. The new language would more closely comport with language used in the regulations promulgated by the U.S. Fish and Wildlife Service.

5. Summary Sale

Section 904.505: Paragraph (d) would be amended to correct a typographical error that existed in the regulations and eliminate cross-references to other sections that have been modified or deleted.

6. Remission of Forfeiture and Restoration of Proceeds of Sale

The heading of this section would be amended to more accurately reflect the contents of this section.

Section 904.506: This section would be amended to incorporate the procedures of current § 904.507. The language in current §§ 904.506 and 904.507, pertaining to the release of seized property, would be moved to § 904.502 because release of seized property is addressed in that section. Current § 904.507 would be incorporated into § 904.506 to avoid duplication of common provisions. The proposed revisions would include amendments to clarify the time period and format requirements for petitions for relief from forfeiture, and the addition of the address where petitions for relief from forfeiture are to be filed.

7. Petition for Restoration of Proceeds

Section 904.507: This section would be incorporated into § 904.506 as described in the preceding paragraph.

8. Recovery of Certain Storage Costs

Section 904.508: This section would be redesignated as § 904.507. This section would be revised to add ''Stevens'' in the second sentence in order to correctly identify the Magnuson-Stevens Fishery Conservation and Management Act.

9. Abandonment

Section 904.509: The heading would be changed from ''Abandonment'' to ''Voluntary forfeiture by abandonment'' and this section would be redesignated as § 904.508. The section would also be amended to more clearly explain the means by which property may be abandoned. This section would add that property will be deemed abandoned when the owner fails to respond within 90 days of service of any certified or registered notice regarding a return of seized property.

10. Disposal of Forfeited or Abandoned Items

Section 904.510: The heading would be changed from ''Disposal of forfeited or abandoned items'' to ''Disposal of forfeited property'' and this section would be redesignated as § 904.509. This section would also be amended for accuracy to substitute the word ''property'' in place of ''items'' wherever that term appears.

Paragraphs (b), (f), and (g) addressing disposal, sale and destruction of property, would be amended to more explicitly specify the manner in which those activities may be carried out. These means of disposal are authorized by the Fish and Wildlife Improvement Act, 16 U.S.C. 742l(c) and comply with General Services Administration (GSA) regulations relating to the handling of government property.

11. Return of Seized Property

Section 904.510: This new section would be added in order to address the issue of returning seized property. In those instances where the Agency decides to return seized property, paragraph (b) describes the proper notice and procedures for release of the property.

III. Invitation of Public Comment

NOAA invites comments on all aspects of the revisions proposed to part 904. For the convenience of the reader only, NOAA is publishing, in its entirety, part 904 as it would be amended. NOAA is not proposing to readopt those portions of part 904 which would remain unchanged. This Notice of Proposed Rulemaking is limited to those changes from the existing regulations described in this Notice.

Information on the time period for submission of comments and directions for their submission may be found in the **DATES** and **ADDRESSES** section of this document.

IV. Administrative Requirements

A. The Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities, i.e., small business, small organizations, and small governmental jurisdictions. The analysis is not required, however, where the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This regulation will impose no significant costs on any small entities, because it creates no new regulatory requirements, but instead simplifies existing procedural rules. The overall economic impact on small entities is therefore believed to be nominal, if any at all. Accordingly, I hereby certify that this proposed regulation will not have a significant impact on a substantial number of small entities.

B. Executive Order 12866

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

C. Paperwork Reduction Act

This proposed rule contains no information collection activities and, therefore, no information collection request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

List of Subjects in 15 CFR Part 904

Administrative practice and procedure, fisheries, fishing, fishing vessels, penalties, seizures and forfeitures.

Dated: September 29, 2004.

James R. Walpole,

General Counsel, National Oceanic and Atmospheric Administration.

For the reasons set forth in the preamble, the NOAA Office of General Counsel for Enforcement and Litigation proposes to revise 15 CFR part 904 as follows:

PART 904—CIVIL PROCEDURES

Subpart A—General

Subpart B—Civil Penalties

Subpart C—Hearing and Appeal Procedures

Subpart D—Permit Sanctions and Denials

Subpart E—Written Warnings

Subpart F—Seizure and Forfeiture Procedures

Authority: 16 U.S.C. 1801–1882; 16 U.S.C. 1531–1543; 16 U.S.C. 1361–1407; 16 U.S.C. 3371–3378; 16 U.S.C. 1431–1439; 16 U.S.C. 773–773k; 16 U.S.C. 951–961; 16 U.S.C. 5001–5012; 16 U.S.C. 3631–3644; 42 U.S.C. 9101 *et seq.*; 30 U.S.C. 1401 *et seq.*; 16 U.S.C. 971–971k; 16 U.S.C. 781 *et seq.*; 16 U.S.C. 2401–2413; 16 U.S.C. 2431–2444; 16 U.S.C. 972–972h; 16 U.S.C. 916–916*l*; 16 U.S.C. 1151–1175; 16 U.S.C. 3601–3608; 16 U.S.C. 1851 note; 15 U.S.C. 5601 *et seq.*; Pub. L. 105–277; 16 U.S.C. 1822 note, Section 801(f); 16 U.S.C. 2465(a); 16 U.S.C. 5103(b); 16 U.S.C. 1385 *et seq.*; 16 U.S.C. 1822 note (Section 4006); 16 U.S.C. 4001–4017; 22 U.S.C. 1980(g); 16 U.S.C. 5506(a); 16 U.S.C. 5601–5612; 16 U.S.C. 1822; 16 U.S.C. 973–973(r); 15 U.S.C. 330–330(e).

Subpart A—General

§ 904.1 Purpose and scope.

(a) This part sets forth the procedures governing NOAA's administrative proceedings for assessment of civil penalties, suspension, revocation, modification, or denial of permits, issuance and use of written warnings, and release or forfeiture of seized property.

(b) This subpart defines terms appearing in the part and sets forth rules for the filing and service of documents in administrative proceedings covered by this part.

(c) The following statutes authorize NOAA to assess civil penalties, impose permit sanctions, issue written warnings, and/or seize and forfeit property in response to violations of those statutes:

(1) American Fisheries Act of 1998, Pub. Law 105–277;

(2) Anadromous Fish Products Act, 16 U.S.C. 1822 note, Section 801(f);

(3) Antarctic Conservation Act of 1978, 16 U.S.C. 2401–2413;

(4) Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431–2444;

(5) Antarctic Protection Act of 1990, 16 U.S.C. 2465(a);

(6) Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5103(b);

(7) Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601–3608;
(8) Atlantic Striped Bass Conservation Act, 16 U.S.C. 1851 note;
(9) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971–971k;
(10) Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.*;
(11) Dolphin Protection Consumer Information Act, 16 U.S.C. 1385 *et seq.*;
(12) Driftnet Impact Monitoring, Assessment, and Control Act, 16 U.S.C. 1822 note (Section 4006);
(13) Eastern Pacific Tuna Licensing Act of 1984, 16 U.S.C. 972–972h;
(14) Endangered Species Act of 1973, 16 U.S.C. 1531–1543;
(15) Fish and Seafood Promotion Act of 1986, 16 U.S.C. 4001- 4017;
(16) Fisherman's Protective Act of 1967, 22 U.S.C. 1980(g);
(17) Fur Seal Act Amendments of 1983, 16 U.S.C. 1151–1175;
(18) High Seas Fishing Compliance Act, 16 U.S.C. 5506(a);
(19) Lacey Act Amendments of 1981, 16 U.S.C. 3371–3378;
(20) Land Remote-Sensing Policy Act of 1992, 15 U.S.C. 5601 *et seq.*;
(21) Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801–1882;
(22) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361–1407;
(23) National Marine Sanctuaries Act, 16 U.S.C. 1431–1439;
(24) North Pacific Anadromous Stocks Convention Act of 1992, 16 U.S.C. 5001–5012;
(25) Northern Pacific Halibut Act of 1982, 16 U.S.C. 773–773k;
(26) Northwest Atlantic Fisheries Convention Act of 1995, 16 U.S.C. 5601–5612;
(27) Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101 *et seq.*;
(28) Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3631–3644;
(29) Shark Finning Prohibition Act, 16 U.S.C. 1822;
(30) South Pacific Tuna Act of 1988, 16 U.S.C. 973–973(r);
(31) Sponge Act, 16 U.S.C. 781 *et seq.*;
(32) Tuna Conventions Act of 1950, 16 U.S.C. 951–961;
(33) Weather Modification Reporting Act, 15 U.S.C. 330 - 330e; and
(34) Whaling Convention Act of 1949, 16 U.S.C. 916–916l.

(d) The procedures set forth in this part are intended to apply to administrative proceedings under these and any other statutes administered by NOAA.

§ 904.2 Definitions and acronyms.

Unless the context otherwise requires, or as otherwise noted, terms in this part have the meanings prescribed in the applicable statute or regulation. In addition, the following definitions apply:

Administrator means the Administrator of NOAA or a designee.

Agency means the National Oceanic and Atmospheric Administration (NOAA).

ALJ Docketing Center means the Docketing Center of the Office of Administrative Law Judges.

Applicable statute means a statute cited in § 904.1(c), and any regulations issued by NOAA to implement it.

Applicant means any person who applies or is expected to apply for a permit.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the USCG;

(2) Any special agent or fishery enforcement officer of NMFS;

(3) Any officer designated by the head of any Federal or State agency that has entered into an agreement with the Secretary to enforce the provisions of any statute administered by NOAA; or

(4) Any USCG personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Citation means a written warning (see section 311(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1861(c), and section 11(c) of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773i(c)).

Decision means an initial or final administrative decision of the Judge.

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include inquiries regarding procedures, scheduling, and status.

Final administrative decision means an order or decision of NOAA assessing a civil penalty or permit sanction which is not subject to further Agency review under this part, and which is subject to collection proceedings or judicial review in an appropriate Federal district court as authorized by law.

Forfeiture includes, but is not limited to, surrender or relinquishment of any claim to an item by written agreement, or otherwise; or extinguishment of any claim to, and transfer of title to an item to the Government by court order or by order of the Administrator under a statute.

Initial decision means a decision of the Judge which, under applicable statute and regulation, is subject to review by the Administrator, but which becomes the final administrative decision in the absence of such review.

Judge means Administrative Law Judge.

NIDP means Notice of Intent to Deny Permit.

NMFS means the National Marine Fisheries Service.

NOAA (see *Agency*) means either the Administrator or a designee acting on behalf of the Administrator.

NOPS means Notice of Permit Sanction.

NOVA means Notice of Violation and Assessment of civil monetary penalty.

Party means the respondent and the Agency as represented by counsel; if they enter an appearance, a joint and several respondent, vessel owner, or permit holder; and any other person allowed to participate under § 904.204(b).

Permit means any license, permit, certificate, or other approval issued by NOAA under an applicable statute.

Permit holder means the holder of a permit or any agent or employee of the holder, and includes the owner and operator of a vessel for which the permit was issued.

PPIP means Preliminary Position on Issues and Procedures.

Sanction means suspension, revocation, or modification of a permit (see § 904.320).

Settlement agreement means any agreement resolving all or part of an administrative or judicial action. The terms of such an agreement may include, but are not limited to, payment of a civil penalty, and/or imposition of a permit sanction.

USCG means the United States Coast Guard.

Vessel owner means the owner of any vessel that may be liable in rem for any civil penalty, or whose permit may be subject to sanction in proceedings under this part.

Written warning means a notice in writing to a person that a violation of a minor or technical nature has been documented against the person or against the vessel which is owned or operated by the person.

§ 904.3 Filing and service of notices, documents and other papers.

(a) Service of a NOVA (§ 904.101), NOPS (§ 904.302), or NIDP (§ 904.303) may be made by certified mail (return receipt requested), facsimile, electronic transmission or third party commercial carrier to an addressee's last known address or by personal delivery. Service of a notice under this subpart will be considered effective upon receipt.

(b) Service of documents and papers other than notices, as described in paragraph (a) of this section, may be made by first class mail (postage

prepaid), facsimile, electronic transmission, or third party commercial carrier, to an addressee's last known address or by personal delivery. Service of documents and papers will be considered effective upon mailing, facsimile transmission, delivery to third party commercial carrier, electronic transmission or upon personal delivery.

(c) Whenever this part requires service of a NOVA, NOPS, NIDP, document or other paper, such service may effectively be made on the agent for service of process, on the attorney for the person to be served, or other representative. Refusal by the person to be served (including an agent, attorney or representative) of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal. In cases where certified notification is returned unclaimed, service will be considered effective if the U.S. Postal Service provides an affidavit stating that the party was receiving mail at the same address during the period when certified service was attempted.

(d) Any documents or pleadings filed or served must be signed:

(1) By the person or persons filing the same,

(2) By an officer thereof if a corporation,

(3) By an officer or authorized employee if a government instrumentality, or

(4) By an attorney or other person having authority to sign.

§ 904.4 Computation of time periods.

(a) *Computation.* For a NOVA, NOPS or NIDP, the thirty day response period begins to run on the date the Notice is received. All other time periods begin to run on the day following the service date of the document, paper, or event that begins the time period. Saturdays, Sundays, and Federal holidays will be included in computing such time, except that when such time expires on a Saturday, Sunday, or Federal holiday, in which event such period will be extended to include the next business day. This method of computing time periods also applies to any act, such as paying a civil penalty, required by this part to take place within a specified period of time. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays will be excluded in the computation.

(b) *Additional time after service by mail.* Whenever a person has the right or is required to do some act or take some proceedings within a prescribed period after the service of a Notice, document or paper upon the person and the document or paper is served upon the party by mail, 3 calendar days shall be added to the prescribed period.

§ 904.5 Appearances.

(a) A party may appear in person or by or with counsel or other representative.

(b) Whenever an attorney or other representative contacts the Agency on behalf of another person with regard to any matter that has resulted in, or may result in, a written warning, a Notice of Violation and Assessment and/or a Notice of Permit Sanction, or a forfeiture proceeding, that attorney or other representative shall file a notice of appearance with the Agency. Such notice shall indicate the name of the person on whose behalf the appearance is made.

(c) Each attorney or other representative who represents a party in any civil administrative hearing shall file a written notice of appearance with the Judge. Such notice shall indicate the name of the case, the docket number, and the party on whose behalf the appearance is made.

Subpart B—Civil Penalties

§ 904.100 General.

This subpart sets forth the procedures governing NOAA administrative proceedings for the assessment of civil penalties under the statutes cited in § 904.1(c).

§ 904.101 Notice of violation and assessment (NOVA).

(a) A NOVA will be issued by NOAA and served upon the person alleged to be subject to a civil penalty (the respondent). The NOVA will contain:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provisions of the Act, regulation, license, permit, agreement, or order allegedly violated;

(3) The findings and conclusions upon which NOAA bases the assessment;

(4) The amount of the civil penalty assessed; and

(5) Information concerning the respondent's rights upon receipt of the NOVA, and will be accompanied by a copy of the regulations in this part governing the proceedings.

(b) In assessing a civil penalty, NOAA will take into account information available to the Agency concerning any factor to be considered under the applicable statute, and any other information that justice or the purposes of the statute require.

(c) The NOVA may also contain a proposal for compromise or settlement of the case. NOAA may also attach documents that illuminate the facts believed to show a violation.

§ 904.102 Procedures upon receipt of a NOVA.

(a) The respondent has 30 days from receipt of the NOVA in which to respond. During this time the respondent may:

(1) Accept the penalty or compromise penalty, if any, by taking the actions specified in the NOVA;

(2) Seek to have the NOVA amended, modified, or rescinded under paragraph (b) of this section;

(3) Request a hearing under § 904.201(a);

(4) Request an extension of time to respond under paragraph (c) of this section; or

(5) Take no action, in which case the NOVA becomes a final administrative decision in accordance with § 904.104.

(b) The respondent may seek amendment or modification of the NOVA to conform to the facts or law as that person sees them by notifying Agency counsel at the telephone number or address specified in the NOVA. If amendment or modification is sought, Agency counsel will either amend the NOVA or decline to amend it, and so notify the respondent.

(c) The respondent may, within the 30–day period specified in paragraph (a) of this section, request an extension of time to respond. Agency counsel may grant an extension of up to 30 days unless he or she determines that the requester could, exercising reasonable diligence, respond within the 30–day period. If Agency counsel does not respond to the request within 48 hours of its receipt, the request is granted automatically for the extension requested, up to a maximum of 30 days. A telephonic response to the request within the 48–hour period is considered an effective response, and will be followed by written confirmation.

(d) Agency counsel may, for good cause, grant an additional extension beyond the 30–day period specified in paragraph (c) of this section.

§ 904.103 Hearing.

(a) Any hearing request under § 904.102(a)(3) is governed by the hearing and review procedures set forth in subpart C of this part.

(b) [Reserved]

§ 904.104 Final administrative decision.

(a) If no request for hearing is timely filed as provided in § 904.201(a), the NOVA becomes effective as the final

administrative decision and order of NOAA on the 30th day after service of the NOVA or on the last day of any delay period granted.

(b) If a request for hearing is timely filed in accordance with § 904.201(a), the date of the final administrative decision is as provided in subpart C of this part.

§ 904.105 Payment of final assessment.

(a) Respondent must make full payment of the civil penalty assessed within 30 days of the date upon which the assessment becomes effective as the final administrative decision and order of NOAA under § 904.104 or subpart C of this part. Payment must be made by mailing or delivering to NOAA at the address specified in the NOVA a check or money order made payable in United States currency in the amount of the assessment to the ''Department of Commerce/NOAA,'' or as otherwise directed.

(b) Upon any failure to pay the civil penalty assessed, NOAA may request the Justice Department to recover the amount assessed in any appropriate district court of the United States, or may act under § 904.106, or may commence any other lawful action.

§ 904.106 Compromise of civil penalty.

(a) NOAA, in its sole discretion, may compromise, modify, remit, or mitigate, with or without conditions, any civil penalty imposed, or which is subject to imposition, except as stated in paragraph (d) of this section.

(b) The compromise authority of NOAA under this section may be exercised either upon the initiative of NOAA or in response to a request by the respondent or other interested person. Any such request should be sent to Agency counsel at the address specified in the NOVA.

(c) Neither the existence of the compromise authority of NOAA under this section nor NOAA's exercise thereof at any time changes the date upon which an assessment is final or payable.

(d) NOAA will not compromise, modify, or remit a civil penalty imposed, or subject to imposition, under the Deep Seabed Hard Mineral Resources Act while an action to review or recover the penalty is pending in a court of the United States.

§ 904.107 Joint and several respondents.

(a) A NOVA may assess a civil penalty against two or more respondents jointly and severally. Each joint and several respondent is liable for the entire penalty, but no more than the amount finally assessed may be collected from the respondents.

(b) A hearing request by one joint and several respondent is not considered a request by the other joint and several respondents. If no request for hearing is timely filed by a joint and several respondent as provided in § 904.201(a), the NOVA becomes effective as the final administrative decision and order of NOAA against the non-requesting joint and several respondent on the 30th day after service of the NOVA or on the last day of any delay period granted.

(c) A settlement with one joint and several respondent shall not affect the liability of other joint and several respondent(s) for any remaining penalties and sanctions.

§ 904.108 Factors considered in assessing penalties.

(a) Factors to be taken into account in assessing a penalty, depending upon the statute in question, may include the nature, circumstances, extent, and gravity of the alleged violation; the respondent's degree of culpability, any history of prior offenses, and ability to pay; and such other matters as justice may require.

(b) NOAA may, in consideration of a respondent's ability to pay, increase or decrease a penalty from an amount that would otherwise be warranted by the other relevant factors. A penalty may be increased if a respondent's ability to pay is such that a higher penalty is necessary to deter future violations, or for commercial violators, to make a penalty more than a cost of doing business. A penalty may be decreased if the respondent establishes that he or she is unable to pay an otherwise appropriate penalty amount.

(c) Except as provided in paragraph (g) of this section, if a respondent asserts that a penalty should be reduced because of an inability to pay, the respondent has the burden of proving such inability by providing verifiable, complete, and accurate financial information to NOAA. NOAA will not consider a respondent's inability to pay unless the respondent, upon request, submits such financial information as Agency counsel determines is adequate to evaluate the respondent's financial condition. Depending on the circumstances of the case, Agency counsel may require the respondent to complete a financial information request form, answer written interrogatories, or submit independent verification of his or her financial information. If the respondent does not submit the requested financial information, he or she will be presumed to have the ability to pay the penalty.

(d) Financial information relevant to a respondent's ability to pay includes, but is not limited to, the value of respondent's cash and liquid assets, ability to borrow, net worth, liabilities, income, prior and anticipated profits, expected cash flow, and the respondent's ability to pay in installments over time. A respondent will be considered able to pay a penalty even if he or she must take such actions as pay in installments over time, borrow money, liquidate assets, or reorganize his or her business. NOAA's consideration of a respondent's ability to pay does not preclude an assessment of a penalty in an amount that would cause or contribute to the bankruptcy or other discontinuation of the respondent's business.

(e) Financial information regarding respondent's ability to pay should be submitted to Agency counsel within sixty (60) days of the receipt of the NOVA. If a respondent has requested a hearing on the offense alleged in the NOVA and wants his or her inability to pay considered in the initial decision of the Judge, verifiable financial information must be submitted to Agency counsel at least thirty (30) days in advance of the hearing. If a respondent submits financial information at the hearing and has not submitted such information to Agency counsel at least 30 days in advance of the hearing, Agency counsel will have 30 days after the hearing in which to respond to the submission. In deciding whether to submit such information, the respondent should keep in mind that the Judge may assess *de novo* a civil penalty either greater or smaller than that assessed in the NOVA.

(f) Issues regarding ability to pay will not be considered in an administrative review of an initial decision if the financial information was not previously presented by the respondent to the Judge at the hearing.

(g) Whenever a statute requires NOAA to take into consideration a respondent's ability to pay when assessing a penalty, NOAA will take into consideration information available to it concerning a respondent's ability to pay. In such case, the NOVA will advise, in accordance with § 904.102, that respondent may seek to have the penalty amount modified by Agency counsel on the basis that he or she does not have the ability to pay the penalty assessed. A request to have the penalty amount modified on this basis must be made in accordance with § 904.102 and should be accompanied by supporting financial information. Agency counsel may request the respondent to submit such additional verifiable financial information as Agency counsel determines is necessary to evaluate the

respondent's financial condition (such as by responding to a financial information request form or written interrogatories, or by authorizing independent verification of respondent's financial condition). A respondent's failure to provide the requested information may serve as the basis for inferring that such information would not have supported the respondent's assertion of inability to pay the penalty assessed in the NOVA.

(h) Whenever a statute requires NOAA to take into consideration a respondent's ability to pay when assessing a penalty and the respondent has requested a hearing on the offense alleged in the NOVA, the Agency must submit information on the respondent's financial condition so that the Judge may consider that information, along with any other factors required to be considered, in the Judge's *de novo* assessment of a penalty. Agency counsel may obtain such financial information through discovery procedures under § 904.240, or otherwise. A respondent's refusal or failure to respond to such discovery requests may serve as the basis for inferring that such information would have been adverse to any claim by respondent of inability to pay the assessed penalty, or result in respondent being barred from asserting financial hardship.

Subpart C—Hearing and Appeal Procedures

GENERAL

§ 904.200 Scope and applicability.

(a) This subpart sets forth the procedures governing the conduct of hearings and the issuance of initial and final administrative decisions of NOAA in administrative proceedings involving alleged violations of the laws cited in § 904.1(c) and regulations implementing these laws, including civil penalty assessments and permit sanctions and denials. By separate regulation, these rules may be applied to other proceedings.

(b) The Judge is delegated authority to make the initial or final administrative decision of the Agency in proceedings subject to the provisions of this subpart, and to take actions to promote the efficient and fair conduct of hearings as set out in this subpart. The Judge has no authority to rule on challenges to the validity of regulations promulgated by the Agency.

(c) This subpart is not an independent basis for claiming the right to a hearing, but instead prescribes procedures for the conduct of hearings, the right to which is provided by other authority.

§ 904.201 Hearing requests and case docketing.

(a) If the respondent wishes a hearing on a NOVA, NOPS or NIDP, the request must be dated and in writing, and must be served either in person or mailed to the Agency counsel specified in the Notice. The requester must either attach a copy of the Notice or refer to the relevant NOAA case number. Agency counsel will promptly forward the request for hearing to the Office of Administrative Law Judges.

(b) If a written application is made to NOAA within ten (10) days after the expiration of a time period established in this part for the required filing of hearing requests, Agency counsel will promptly forward the request for hearing to the Office of Administrative Law Judges for a determination on whether such request shall be considered timely filed. A written application for a hearing filed more than ten (10) days after the expiration of a time period established in this part for the required filing of hearing requests, will be promptly forwarded to the Office of Administrative Law Judges by Agency counsel, and shall be deemed untimely filed by the Office of Administrative Law Judges. Determinations regarding untimely hearing requests under this section shall be in writing.

(c) Agency counsel may, in his or her discretion, treat any written communication from a respondent as a request for a hearing under paragraph (a) of this section.

(d) Each request for hearing promptly upon its receipt for filing in the Office of Administrative Law Judges will be assigned a docket number and thereafter the proceeding will be referred to by such number. Written notice of the assignment of hearing to a Judge will promptly be given to the parties.

§ 904.202 Filing of documents.

(a) Pleadings, papers, and other documents in the proceeding must be filed in conformance with § 904.3 directly with the Judge, with copies served on the ALJ Docketing Center and all other parties.

(b) Unless otherwise ordered by the Judge, discovery requests and answers will be served on the opposing party and need not be filed with the Judge.

§ 904.203 [Reserved]

§ 904.204 Duties and powers of Judge.

The Judge has all powers and responsibilities necessary to preside over the parties and the proceeding, to hold prehearing conferences, to conduct the hearing, and to render decisions in accordance with these regulations and 5 U.S.C. 554 through 557, including, but not limited to, the authority and duty to do the following:

(a) Rule on timeliness of hearing requests pursuant to § 904.201(b).

(b) Rule on a request to participate as a party in the proceeding by allowing, denying, or limiting such participation (such ruling will consider views of the parties and be based on whether the requester could be directly and adversely affected by the determination and whether the requester can be expected to contribute materially to the disposition of the proceedings);

(c) Schedule the time, place, and manner of conducting the pre-hearing conference or hearing, continue the hearing from day to day, adjourn the hearing to a later date or a different place, and reopen the hearing at any time before issuance of the decision, all in the Judge's discretion, having due regard for the convenience and necessity of the parties and witnesses;

(d) Schedule and regulate the course of the hearing and the conduct of the participants and the media, including the power to close the hearings in the interests of justice; seal the record from public scrutiny to protect privileged information, trade secrets, and confidential commercial or financial information; and strike testimony of a witness who refuses to answer a question ruled to be proper;

(e) Administer oaths and affirmations to witnesses;

(f) Rule on discovery requests, establish discovery schedules, and, whenever the ends of justice would thereby be served, take or cause depositions or interrogatories to be taken and issue protective orders under § 904.240(d);

(g) Rule on motions, procedural requests, and similar matters;

(h) Receive, exclude, limit, and otherwise rule on offers of proof and evidence;

(i) Examine and cross-examine witnesses and introduce into the record on the Judge's own initiative documentary or other evidence;

(j) Rule on requests for appearance of witnesses or production of documents and take appropriate action upon failure of a party to effect the appearance or production of a witness or document ruled relevant and necessary to the proceeding; as authorized by law, issue subpoenas for the appearance of witnesses or production of documents;

(k) Require a party or witness at any time during the proceeding to state his or her position concerning any issue or his or her theory in support of such position;

(l) Take official notice of any matter not appearing in evidence that is among traditional matters of judicial notice; or of technical or scientific facts within the general or specialized knowledge of the Department of Commerce as an expert body; or of a non-privileged document required by law or regulation to be filed with or published by a duly constituted government body; or of any reasonably available public document; *Provided*, that the parties will be advised of the matter noticed and given reasonable opportunity to show the contrary;

(m) For stated good reason(s), assess a penalty *de novo* without being bound by the amount assessed in the NOVA;

(n) Prepare and submit a decision or other appropriate disposition document and certify the record;

(o) Award attorney fees and expenses as provided by applicable statute or regulation;

(p) Grant preliminary or interim relief;

(q) Impose, upon the motion of any party, or *sua sponte*, appropriate sanctions.

(1) Sanctions may be imposed when any party, or any person representing a party, in an adjudicatory proceeding under this part has failed to comply with this part, or any order issued under this part, and such failure to comply:

(i) Materially injures or prejudices another party by causing additional expenses; prejudicial delay; or other injury or prejudice;

(ii) Is a clear and unexcused violation of this part, or any order issued under this part; or

(iii) Unduly delays the proceeding.

(2) Sanctions which may be imposed include, but are not limited to, one or more of the following:

(i) Issuing an order against the party;

(ii) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(iii) Expelling the party from the proceedings;

(iv) Precluding the party from contesting specific issues or findings;

(v) Precluding the party from making a late filing or conditioning a late filing on any terms that are just;

(vi) Assessing reasonable expenses, incurred by any other party as a result of the improper action or failure to act; and

(vii) Taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation, deemed appropriate by the Judge.

(3) No sanction authorized by this section, other than refusal to accept late filings, shall be imposed without prior notice to all parties and an opportunity for any party against whom sanctions would be imposed to be heard. Such opportunity to be heard may be on such notice, and the response may be in such form as the Judge directs and may be limited to an opportunity for a party or a party's representative to respond orally immediately after the act or inaction is noted by the Judge.

(4) The imposition of sanctions is subject to interlocutory review pursuant to § 904.254 in the same manner as any other ruling.

(5) Nothing in this section shall be read as precluding the Judge from taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation.

§ 904.205 Disqualification of Judge.

(a) The Judge may withdraw voluntarily from a particular case when the Judge deems himself/herself disqualified.

(b) A party may in good faith request the Judge to withdraw on the grounds of personal bias or other disqualification. The party seeking the disqualification must file with the Judge a timely affidavit or statement setting forth in detail the facts alleged to constitute the grounds for disqualification, and the Judge will rule on the matter. If the Judge rules against disqualification, the Judge will place all matters relating to such claims of disqualification in the record.

§ 904.206 Pleadings, motions, and service.

(a) The original of all pleadings and documents must be filed with the Judge and a copy served upon the ALJ Docketing Center and each party. All pleadings or documents when submitted for filing must show that service has been made upon all parties. Such service must be made in accordance with § 904.3(b).

(b) Pleadings and documents to be filed may be reproduced by printing or any other process, provided the copies are clear and legible; must be dated, the original signed in ink or as otherwise verified for electronic mail; and must show the docket description and title of the proceeding, and the title, if any, address, and telephone number of the signatory. If typewritten, the impression may be on only one side of the paper and must be double spaced, if possible, except that quotations may be single spaced and indented.

(c) Motions must normally be made in writing and must state clearly and concisely the purpose of and relief sought by the motion, the statutory or principal authority relied upon, and the facts claimed to constitute the grounds requiring the relief requested.

(d) Unless otherwise provided, the answer to any written motion, pleading, or petition must be served within 20 days after date of service thereof. If a motion states that opposing counsel has no objection, it may be acted upon as soon as practicable, without awaiting the expiration of the 20–day period. Answers must be in writing, unless made in response to an oral motion made at a hearing; must fully and completely advise the parties and the Judge concerning the nature of the opposition; must admit or deny specifically and in detail each material allegation of the pleading answered; and must state clearly and concisely the facts and matters of law relied upon. Any new matter raised in an answer will be deemed controverted.

(e) A response to an answer will be called a reply. A short reply restricted to new matters may be served within 15 days of service of an answer. The Judge has discretion to dispense with the reply. No further responses are permitted.

§ 904.207 Amendment of pleading or record.

(a) A party may amend the party's pleading as a matter of course at least twenty (20) days prior to a hearing. Within twenty (20) days prior to a hearing a party may amend the party's pleading only by leave of the Judge or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period is longer, unless the Judge otherwise orders.

(b) The Judge, upon his or her own initiative or upon application by a party, may order a party to make a more definite statement of any pleading.

(c) Harmless errors in pleadings or elsewhere in the record may be corrected (by deletion or substitution of words or figures), and broad discretion will be exercised by the Judge in permitting such corrections.

§ 904.208 Extensions of time.

If appropriate and justified, and as provided in § 904.201(b), the Judge may grant any request for an extension of time. Requests for extensions of time must, except in extraordinary circumstances, be made in writing.

§ 904.209 Expedited proceedings.

In the interests of justice and administrative efficiency, the Judge, on his or her own initiative or upon the application of any party, may expedite

the proceeding. A motion of a party to expedite the proceeding may, in the discretion of the Judge, be made orally or in writing with concurrent actual notice to all parties. If a motion for an expedited hearing is granted, the hearing on the merits may not be scheduled with less than five business days' notice, unless all parties consent to an earlier hearing.

§ 904.210 Summary decision.

The Judge may render a summary decision disposing of all or part of the proceeding if:

(a) Jointly requested by every party to the proceeding; and

(b) There is no genuine issue as to any material fact and a party is entitled to summary decision as a matter of law.

§ 904.211 Failure to appear.

(a) If, after proper service of notice, a party appears at the hearing and no party appears for the opposing side, the Judge is authorized to dismiss the case or to find the facts as alleged in the NOVA and enter a default judgment containing such findings and conclusions as are appropriate.

(b) Following an order of default judgment, the non-appearing party may file a petition for reconsideration, in accordance with § 904.272. Only petitions citing reasons for non-appearance, as opposed to arguing the merits of the case, will be considered.

(c) The Judge will place in the record all the facts concerning the issuance and service of the notice of time and place of hearing.

(d) The Judge may deem a failure of a party to appear after proper notice a waiver of any right to a hearing and consent to the making of a decision on the record.

(e) Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Administrative Law Judge's decision.

§ 904.212 Failure to prosecute or defend.

(a) Whenever the record discloses the failure of either party to file documents, respond to orders or notices from the Judge, or otherwise indicates an intention on the part of either party not to participate further in the proceeding, the Judge may issue:

(1) An order requiring either party to show why the matter that is the subject of the failure to respond should not be disposed of adversely to that party's interest;

(2) An order requiring either party to certify intent to appear at any scheduled hearing; or

(3) Any order, except dismissal, as is necessary for the just and expeditious resolution of the case.

(b) [Reserved]

§ 904.213 Settlements.

If settlement is reached before the Judge has certified the record, the Judge shall remove the case from the docket upon notification by the Agency.

§ 904.214 Stipulations.

The parties may, by stipulation, agree upon any matters involved in the proceeding and include such stipulations in the record with the consent of the Judge. Written stipulations must be signed and served upon all parties.

§ 904.215 Consolidation.

The Judge may order two or more proceedings that involve substantially the same parties or the same issues consolidated and/or heard together.

§ 904.216 Prehearing conferences.

(a) Prior to any hearing or at other time deemed appropriate, the Judge may, upon his or her own initiative, or upon the application of any party, direct the parties to appear for a conference or arrange a telephone conference. The Judge shall provide at least twenty-four hours notice of the conference to the parties, and shall record such conference by audio recording or stenographer, to consider:

(1) Simplification or clarification of the issues or settlement of the case by consent;

(2) The possibility of obtaining stipulations, admissions,

agreements, and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate the discovery process;

(4) Limitation of the number of expert witnesses or other avoidance of cumulative evidence;

(5) The procedure, course, and conduct of the hearing;

(6) The distribution to the parties and the Judge prior to the hearing of written testimony and exhibits in order to expedite the hearing; or

(7) Such other matters as may aid in the disposition of the proceeding, including the status of settlement discussions.

(b) The Judge in his or her discretion may issue an order showing the matters disposed of in such conference, and shall provide a transcript of the conference upon the request of a party.

DISCOVERY

§ 904.240 Discovery generally.

(a) *Preliminary position on issues and procedures.* Prior to hearing the Judge will ordinarily require the parties to submit a written Preliminary Position on Issues and Procedures (PPIP). Except for information regarding a respondent's ability to pay an assessed penalty, this PPIP will normally obviate the need for further discovery.

(1) The PPIP shall include the following information: a factual summary of the case; a summary of all factual and legal issues in dispute; a list of all defenses that will be asserted, together with a summary of all factual and legal bases supporting each defense; a list of all potential witnesses, together with a summary of their anticipated testimony; and a list of all potential exhibits.

(2) The PPIP shall be signed by the party and an attorney, if one is retained. The PPIP shall be served upon all parties, along with a copy of each potential exhibit listed in the PPIP.

(3) A party has the affirmative obligation to supplement the PPIP as available information or documentation relevant to the stated charges or defenses becomes known to the party.

(b) *Additional discovery.* Upon written motion by a party, the Judge may allow additional discovery only upon a showing of relevance, need, and reasonable scope of the evidence sought, by one or more of the following methods: deposition upon oral examination or written questions, written interrogatories, production of documents or things for inspection and other purposes, and requests for admission. With respect to information regarding a respondent's ability to pay an assessed penalty, the Agency may serve any discovery request (i.e., deposition, interrogatories, admissions, production of documents) directly upon the respondent without first seeking an order from the Judge.

(c) *Time limits.* Motions for depositions, interrogatories, admissions, or production of documents or things may not be filed within 20 days of hearing except on order of the Judge for good cause shown. Oppositions to a discovery motion must be filed within 10 days of service unless otherwise provided in these rules or by the Judge.

(d) *Oppositions.* Oppositions to any discovery motion or portion thereof must state with particularity the grounds relied upon. Failure to object in a timely fashion constitutes waiver of the objection.

(e) *Scope of discovery.* The Judge may limit the scope, subject matter, method, time, or place of discovery. Unless otherwise limited by order of the Judge, the scope of discovery is as follows:

(1) *In general.* As allowed under paragraph (b) of this section, parties

may obtain discovery of any matter, not privileged, that is relevant to the allegations of the charging document, to the proposed relief, or to the defenses of any respondent, or that appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Hearing preparation: Materials.* A party may not obtain discovery of materials prepared in anticipation of litigation except upon a showing that the party seeking discovery has a substantial need for the materials in preparation of his or her case, and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party are not discoverable under this section.

(3) *Hearing preparation: Experts.* A party may discover the substance of the facts and opinions to which an expert witness is expected to testify and a summary of the grounds for each opinion. A party may also discover facts known or opinions held by an expert consulted by another party in anticipation of litigation but not expected to be called as a witness upon a showing of exceptional circumstances making it impracticable for the party seeking discovery to obtain such facts or opinions by other means.

(f) *Failure to comply.* If a party fails to comply with any provision of this section, including any PPIP, subpoena or order concerning discovery, the Judge may, in the interest of justice:

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party;

(2) Rule that the matter or matters covered by the order or subpoena are established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely upon, in support of any claim or defense, testimony by such party, officer, or agent, or the documents or other evidence;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Strike part or all of a pleading (except a request for hearing), a motion or other submission by the party, concerning the matter or matters covered by the order or subpoena.

§ 904.241 Depositions.

(a) *Notice.* If a motion for deposition is granted, and unless otherwise ordered by the Judge, the party taking the deposition of any person must serve on that person, and each other party, written notice at least 15 days before the deposition would be taken (or 25 days if the deposition is to be taken outside the United States). The notice must state the name and address of each person to be examined, the time and place where the examination would be held, the name and mailing address of the person before whom the deposition would be taken, and the subject matter about which each person would be examined.

(b) *Taking the deposition.* Depositions may be taken before any officer authorized to administer oaths by the law of the United States or of the place where the examination is to be held, or before a person appointed by the Judge. Each deponent will be sworn, and any party has the right to cross-examine. Objections are not waived by failure to make them during the deposition unless the ground of the objection is one that might have been removed if presented at that time. The deposition will be recorded, transcribed, signed by the deponent, unless waived, and certified by the officer before whom the deposition was taken. All transcription costs associated with the testimony of a deponent will be borne by the party seeking the deposition. Each party will bear its own expense for any copies of the transcript. See also § 904.252(a).

(c) *Alternative deposition methods.* By order of the Judge, the parties may use other methods of deposing parties or witnesses, such as telephonic depositions or depositions upon written questions. Objections to the form of written questions are waived unless made within five days of service of the questions.

(d) *Use of depositions at hearing.* (1) At hearing any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then testifying, may be used against any party who was present or represented at the taking of the deposition, or had reasonable notice.

(2) The deposition of a witness may be used by any party for any purpose if the Judge finds:

(i) That the witness is unable to attend due to death, age, health, imprisonment, disappearance or distance from the hearing site; or

(ii) That exceptional circumstances make it desirable, in the interest of justice, to allow the deposition to be used.

(3) If only part of a deposition is offered in evidence by a party, any party may introduce any other part.

§ 904.242 Interrogatories.

(a) *Use at hearing.* If ordered by the Judge, any party may serve upon any other party written interrogatories. Answers may be used at hearing in the same manner as depositions under § 904.241(d).

(b) *Answers and objections.* Answers and objections must be made in writing under oath, and reasons for the objections must be stated. Answers must be signed by the person making them and objections must be signed by the party or attorney making them. Unless otherwise ordered, answers and objections must be served on all parties within 20 days after service of the interrogatories.

(c) *Option to produce records.* Where the answer to an interrogatory may be ascertained from the records of the party upon whom the interrogatory is served, it is sufficient to specify such records and afford the party serving the interrogatories an opportunity to examine them.

§ 904.243 Admissions.

(a) *Request.* If ordered by the Judge, any party may serve on any other party a written request for admission of the truth of any relevant matter of fact set forth in the request, including the genuineness of any relevant document described in the request. Copies of documents must be served with the request. Each matter of which an admission is requested must be separately stated.

(b) *Response.* Each matter is admitted unless a written answer or objection is served within 20 days of service of the request, or within such other time as the Judge may allow. The answering party must specifically admit or deny each matter, or state the reasons why he or she cannot truthfully admit or deny it.

(c) *Effect of admission.* Any matter admitted is conclusively established unless the Judge on motion permits withdrawal or amendment of it for good cause shown.

§ 904.244 Production of documents and inspection.

(a) *Scope.* If ordered by the Judge, any party may serve on any other party a request to produce a copy of any document or specifically designated category of documents, or to inspect, copy, photograph, or test any such document or tangible thing in the possession, custody, or control of the party upon whom the request is served.

(b) *Procedure.* The request must set forth:

(1) The items to be produced or inspected by item or by category,

described with reasonable particularity, and

(2) A reasonable time, place, and manner for inspection. The party upon whom the request is served must serve within 20 days a response or objections, which must address each item or category and include copies of the requested documents.

§ 904.245 Subpoenas.

(a) *In general.* Subpoenas for the attendance and testimony of witnesses and the production of documentary evidence for the purpose of discovery or hearing may be issued as authorized by the statute under which the proceeding is conducted.

(b) *Timing.* Applications for subpoenas must be submitted at least 10 days before the scheduled hearing or deposition.

(c) *Motions to quash.* Any person to whom a subpoena is directed or any party may move to quash or limit the subpoena within 10 days of its service or on or before the time specified for compliance, whichever is shorter. The Judge may quash or modify the subpoena.

(d) *Enforcement.* In case of disobedience to a subpoena, NOAA may request the Justice Department to invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

HEARINGS

§ 904.250 Notice of time and place of hearing.

(a) The Judge shall be responsible for scheduling the hearing. With due regard for the convenience of the parties, their representatives, or witnesses, the Judge shall fix the time, place and date for the hearing and shall notify all parties of the same. The Judge will promptly serve on the parties notice of the time and place of hearing. The hearing will not be held less than 20 days after service of the notice of hearing unless the hearing is expedited as provided under § 904.250(c).

(b) A request for a change in the time, place, or date of the hearing may be granted by the Judge.

(c) Upon the consent of each party to the proceeding, the Judge may order that all or part of a proceeding be heard on submissions or affidavits if it appears that substantially all important issues may be resolved by means of written materials and that efficient disposition of the proceeding can be made without an in-person hearing.

(d) At any time after commencement of the proceeding, any party may move to expedite the scheduling of a proceeding.

(1) A party moving to expedite a proceeding shall describe the circumstances justifying expedition, and provide affidavits supporting any representations of fact.

(2) Upon granting a motion to expedite the scheduling of a proceeding, the Judge may expedite pleading schedules, prehearing conferences and the hearing, as appropriate.

§ 904.251 Evidence.

(a) *In general.* (1) At the hearing, every party has the right to present oral or documentary evidence in support of its case or defense, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. This paragraph may not be interpreted to diminish the powers and duties of the Judge under § 904.204.

(2) All evidence that is relevant, material, reliable, and probative, and not unduly repetitious or cumulative, is admissible at the hearing. Formal rules of evidence do not necessarily apply to the proceedings, and hearsay evidence is not inadmissible as such.

(3) In any case involving a charged violation of law in which the party charged has admitted an allegation, evidence may be taken to establish matters of aggravation or mitigation.

(b) *Objections and offers of proof.* (1) A party shall state the grounds for objection to the admission or exclusion of evidence. Rulings on all objections shall appear in the record. Only objections made before the Judge may be raised on appeal.

(2) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record.

(c) *Testimony.* (1) Testimony may be received into evidence by the following means:

(i) Oral presentation; and

(ii) Subject to the discretion of the Judge, written affidavit, telephone, or video or other electronic media.

(2) Regardless of form, all testimony shall be under oath or affirmation requiring the witness to declare that the witness will testify truthfully, and subject to cross examination.

(d) *Exhibits and documents.* (1) All exhibits shall be numbered and marked with a designation identifying the sponsor. To prove the content of an exhibit, the original writing, recording or photograph is required except that a duplicate or copy is admissible to the same extent as an original unless a genuine question is raised as to the authenticity of the original or, given the circumstances, it would be unfair to admit the duplicate in lieu of the original. The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if the original is lost or destroyed, not obtainable, in the possession of the opponent, or not closely related to a controlling issue. Each exhibit offered in evidence or marked for identification shall be filed and retained in the record of decision, unless the Judge permits the substitution of copies for the original document.

(2) In addition to the requirements set forth in § 904.240(a)(2), parties shall exchange all remaining exhibits that will be offered at hearing prior to the beginning of the hearing, except for good cause or as otherwise directed by the Judge. Exhibits that are not exchanged as required may be denied admission into evidence. This requirement does not apply to demonstrative evidence.

(e) *Physical evidence.* (1) Photographs or videos or other electronic media may be substituted for physical evidence at the discretion of the Judge.

(2) Except upon the Judge's order, or upon request by a party, physical evidence will be retained after the hearing by the Agency.

(f) *Stipulations.* The parties may by stipulation in writing at any stage of the proceeding or orally at the hearing agree upon any matters involved in the proceeding. Stipulations may be received in evidence before or during the hearing and, when received in evidence, shall be binding on the parties to the stipulation.

(g) *Official notice.* The Judge may take official notice of such matters as might be judicially noticed by the courts or of other facts within the specialized knowledge of the agency as an expert body. Where a decision or part thereof rests on official notice of a material fact not appearing in the evidence in the record, the fact of official notice shall be so stated in the decision, and any party, upon timely request, shall be afforded an opportunity to show the contrary.

(h) *Confidential and sensitive information.* (1) The Judge may limit introduction of evidence or issue protective orders that are required to prevent undue disclosure of classified, confidential, or sensitive matters, which include, but are not limited to, matters of a national security, business, personal, or proprietary nature. Where the Judge determines that information in documents containing classified, confidential, or sensitive matters should be made available to another party, the Judge may direct the offering party to

prepare an unclassified or non-sensitive summary or extract of the original. The summary or extract may be admitted as evidence in the record.

(2) If the Judge determines that the procedure described in paragraph (h)(1) of this section is inadequate and that classified or otherwise sensitive matters must form part of the record in order to avoid prejudice to a party, the Judge may advise the parties and provide opportunity for arrangements to permit a party or representative to have access to such matters.

(i) *Foreign law.* (1) A party who intends to raise an issue concerning the law of a foreign country must give reasonable notice. The Judge, in determining foreign law, may consider any relevant material or source, whether or not submitted by a party.

(2) Exhibits in a foreign language must be translated into English before such exhibits are offered into evidence. Copies of both the untranslated and translated versions of the proposed exhibits, along with the name and qualifications of the translator, must be served on the opposing party at least 10 days prior to the hearing unless the parties otherwise agree.

§ 904.252 Witnesses.

(a) *Fees.* Witnesses, other than employees of a federal agency, summoned in an adjudication, including discovery, shall receive the same fees and mileage as witnesses in the courts of the United States.

(b) *Witness counsel.* Any witness not a party may have personal counsel to advise him or her as to his or her rights, but such counsel may not otherwise participate in the hearing.

(c) *Witness exclusion.* Witnesses who are not parties may be excluded from the hearing room prior to the taking of their testimony. An authorized officer is considered a party for the purposes of this subsection.

(d) *Oath or affirmation.* Witnesses shall testify under oath or affirmation requiring the witness to declare that the witness will testify truthfully.

(e) *Failure or refusal to testify.* If a witness fails or refuses to testify, the failure or refusal to answer any question found by the Judge to be proper may be grounds for striking all or part of the testimony given by the witness, or any other action deemed appropriate by the Judge.

(f) *Testimony in a foreign language.* If a witness is expected to testify in a language other than the English language, the party sponsoring the witness must provide for the services of an interpreter and advise opposing counsel 10 days prior to the hearing concerning the extent to which interpreters are to be used. When available, the interpreter should be court certified under 28 U.S.C. 1827.

§ 904.253 Closing of record.

At the conclusion of the hearing, the evidentiary record shall be closed unless the Judge directs otherwise. Once the record is closed, no additional evidence shall be accepted except upon a showing that the evidence is material and that there was good cause for failure to produce it in a timely fashion. The Judge shall reflect in the record, however, any approved correction to the transcript.

§ 904.254 Interlocutory review.

(a) Application for interlocutory review shall be made to the Judge. The application shall not be certified to the Administrator except when the Judge determines that:

(1) The ruling involves a dispositive question of law or policy about which there is substantial ground for difference of opinion; or

(2) An immediate ruling will materially advance the completion of the proceeding; or

(3) The denial of an immediate ruling will cause irreparable harm to a party or the public.

(b) Any application for interlocutory review shall:

(1) Be filed with the Judge within 30 days after the Judge's ruling;

(2) Designate the ruling or part thereof from which appeal is being taken;

(3) Set forth the ground on which the appeal lies; and

(4) Present the points of fact and law relied upon in support of the position taken.

(c) Any party that opposes the application may file a response within twenty (20) days after service of the application.

(d) The certification to the Administrator by the Judge shall stay proceedings before the Judge until the matter under interlocutory review is decided.

§ 904.255 Ex parte communications.

(a) Except to the extent required for disposition of *ex parte* matters as authorized by law, the Judge may not consult a person or party on any matter relevant to the merits of the adjudication, unless there has been notice and opportunity for all parties to participate.

(b) Except to the extent required for the disposition of *ex parte* matters as authorized by law:

(1) No interested person outside the Agency shall make or knowingly cause to be made to the Judge, the Administrator, or any Agency employee who is or may reasonably be expected to be involved in the decisional process of the adjudication an *ex parte* communication relevant to the merits of the adjudication; and

(2) Neither the Administrator, the Judge, nor any Agency employee who is or may reasonably be expected to be involved in the decisional process of the adjudication, shall make or knowingly cause to be made to any interested person outside the agency an *ex parte* communication relevant to the merits of the adjudication.

(c) The Administrator, the Judge, or any Agency employee who is or may reasonably be expected to be involved in the decisional process who receives, makes, or knowingly causes to be made a communication prohibited by this rule shall place in the record of decision:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications;

(3) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (c)(1) and (c)(2) of his section.

(d)(1) Paragraphs (a), (b) and (c) of this section do not apply to communications concerning national defense or foreign policy matters. Such *ex parte* communications to or from an Agency employee on national defense or foreign policy matters, or from employees of the United States Government involving intergovernmental negotiations, are allowed if the communicator's position with respect to those matters cannot otherwise be fairly presented for reasons of foreign policy or national defense.

(2) *Ex parte* communications subject to this paragraph will be made a part of the record to the extent that they do not include information classified under an Executive Order. Classified information will be included in a classified portion of the record that will be available for review only in accordance with applicable law.

(e) Upon receipt of a communication made, or knowingly caused to be made, by a party in violation of this section the Judge may, to the extent consistent with the interests of justice, national security, the policy of underlying statutes, require the party to show cause why its claim or interest in the adjudication should not be dismissed, denied, disregarded, or otherwise adversely affected by reason of such violation.

(f) The prohibitions of this rule shall apply beginning after issuance of a NOVA, NOPS or NIDP and until a final administrative decision is rendered, but in no event shall they begin to apply

later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of her/his acquisition of such knowledge.

POST-HEARING

§ 904.260 Recordation of Hearing.

(a) All hearings shall be recorded.

(b) The official transcript of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith, will be filed with the Office of Administrative Law Judges. Transcripts of testimony will be available in any proceeding and will be supplied to the parties at the cost of the Agency.

(c) The Judge may determine whether ''ordinary copy'', ''daily copy'',or other copy (as those terms are defined by contract) will be necessary and required for the proper conduct of the proceeding.

§ 904.261 Post-hearing briefs.

(a) The parties may file post-hearing briefs that include proposed findings of fact and conclusions of law within 30 calendar days from service of the hearing transcript. Reply briefs may be submitted within 15 days after service of the proposed findings and conclusions to which they respond.

(b) The Judge, in his or her discretion, may establish a different date for filing either initial briefs or reply briefs with the court.

(c) In cases involving few parties, limited issues, and short hearings, the Judge may require or a party may request that any proposed findings and conclusions and reasons in support be presented orally at the close of a hearing. In granting such cases, the Judge will advise the parties in advance of hearing.

DECISION

§ 904.270 Record of decision.

(a) The exclusive record of decision consists of the official transcript of testimony and proceedings; exhibits admitted into evidence; briefs, pleadings, and other documents filed in the proceeding; and descriptions or copies of matters, facts, or documents officially noticed in the proceeding. Any other exhibits and records of any *ex parte* communications will accompany the record of decision.

(b) The Judge will arrange for appropriate storage of the records of any proceeding, which place of storage need not necessarily be located physically within the Office of Administrative Law Judges.

§ 904.271 Initial decision.

(a) After expiration of the period provided in § 904.261 for the filing of reply briefs (unless the parties have waived briefs or presented proposed findings orally at the hearing), the Judge will render a written decision upon the record in the case, setting forth:

(1) Findings and conclusions, and the reasons or bases therefor, on all material issues of fact, law, or discretion presented on the record;

(2) An order as to the final disposition of the case, including any appropriate ruling, order, sanction, relief, or denial thereof;

(3) The date upon which the decision will become effective; and

(4) A statement of further right to appeal.

(b) If the parties have presented oral proposed findings at the hearing or have waived presentation of proposed findings, the Judge may at the termination of the hearing announce the decision, subject to later issuance of a written decision under paragraph (a) of this section. The Judge may in such case direct the prevailing party to prepare proposed findings, conclusions, and an order.

(c) The Judge will serve the written decision on each of the parties by registered or certified mail, return receipt requested and will promptly certify to the Administrator the record, including the original copy of the decision, as complete and accurate.

(d) An initial decision becomes effective as the final administrative decision of NOAA 30 days after service, unless:

(1) Otherwise provided by statute or regulations; or

(2) The Judge grants a petition for rehearing or reconsideration under § 904.272.

§ 904.272 Petition for reconsideration.

Unless an order or initial decision of the Judge specifically provides otherwise, any party may file a petition for reconsideration of an order or initial decision issued by the Judge. Such petitions must state the matter claimed to have been erroneously decided, and the alleged errors and relief sought must be specified with particularity. Petitions must be filed within 20 days after the service of such order or initial decision. The filing of a petition for reconsideration shall operate as a stay of an order or initial decision or its effectiveness date unless specifically so ordered by the Judge. Within 15 days after the petition is filed, any party to the proceeding may file an answer in support or in opposition.

Subpart D—Permit Sanctions and Denials

GENERAL

§ 904.300 Scope and applicability.

(a) This subpart sets forth policies and procedures governing the suspension, revocation, modification, and denial of permits for reasons relating to enforcement of the statutes cited in § 904.1(c), except for the statutes listed in paragraph (b) of this section. Nothing in this subpart precludes sanction or denial of a permit for reasons not relating to enforcement. As appropriate, and unless otherwise specified in this subpart, the provisions of Subparts A, B, and C apply to this subpart.

(b) Regulations governing sanctions and denials of permits issued under the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1401 *et seq.*) appear at 15 CFR part 970.

§ 904.301 Bases for sanctions or denials.

(a) Unless otherwise specified in a settlement agreement, or otherwise provided in this subpart, NOAA may take action under this subpart with respect to any permit issued under the statutes cited in § 904.1(c). The bases for an action to sanction or deny a permit include but are not limited to the following:

(1) The commission of any offense prohibited by any statute administered by NOAA, including violation of any regulation promulgated or permit condition or restriction prescribed thereunder, by the permit holder or with the use of a permitted vessel;

(2) The failure to pay a civil penalty assessed under subparts B and C;

(3) The failure to pay a criminal fine imposed or to satisfy any other liability incurred in a judicial proceeding under any of the statutes administered by NOAA; or

(4) The failure to comply with any term of a settlement agreement.

(b) A sanction may be imposed, or a permit denied, under this subpart with respect to the particular permit pertaining to the offense or nonpayment, and may also be applied to any NOAA permit held or sought by the permit holder or successor in interest to the permit, including permits for other activities or for other vessels. Examples of the application of this policy are the following:

(1) NOAA suspends Vessel A's fishing permit for nonpayment of a civil penalty pertaining to Vessel A. The owner of Vessel A buys Vessel B and applies for a permit for Vessel B to participate in the same or a different fishery. NOAA may withhold that permit until the sanction against vessel A is lifted.

(2) NOAA revokes a Marine Mammal Protection Act permit for violation of its conditions. The permit holder subsequently applies for a permit under the Endangered Species Act. NOAA may deny the ESA application.

(3) Captain X, an officer in Country Y's fishing fleet, is found guilty of assaulting an enforcement officer. NOAA may impose a condition on the permits of Country Y's vessels that they may not fish in the Exclusive Economic Zone with Captain X aboard. (See § 904.320(c).)

(c) A sanction may not be extinguished by sale or transfer. The sanction of any vessel permit is not extinguished by sale or transfer of the vessel, nor by dissolution or reincorporation of a vessel owner corporation, and shall remain with the vessel until lifted by NOAA.

§ 904.302 Notice of permit sanction (NOPS).

(a) A NOPS will be served personally or by certified mail, return receipt requested, on the permit holder. When a foreign fishing vessel is involved, service will be made on the agent authorized to receive and respond to any legal process for vessels of that country.

(b) The NOPS will set forth the sanction to be imposed, the bases for the sanction, and any opportunity for a hearing. It will state the effective date of the sanction, which will ordinarily not be earlier than 30 calendar days after the date of receipt of the NOPS (see § 904.322).

(c) Upon demand by an authorized enforcement officer, a permit holder must surrender a permit against which a sanction has taken effect. The effectiveness of the sanction, however, does not depend on surrender of the permit.

§ 904.303 Notice of intent to deny permit (NIDP).

(a) NOAA may issue a NIDP if the applicant has been charged with a violation of a statute, regulation, or permit administered by NOAA, for failure to pay a civil penalty, or for failure to comply with any term of a settlement agreement.

(b) The NIDP will set forth the basis for its issuance and any opportunity for a hearing, and will be served in accordance with § 904.302(a).

(c) NOAA will not refund any fee(s) submitted with a permit application if a NIDP is issued.

(d) A NIDP may be issued in conjunction with or independent of a NOPS. Nothing in this section should be interpreted to preclude NOAA from initiating a permit sanction action following issuance of the permit, or from withholding a permit under § 904.310(c) or § 904.320.

§ 904.304 Opportunity for hearing.

(a) Except as provided in paragraph (b) of this section, the recipient of a NOPS or NIDP will be provided an opportunity for a hearing, as governed by § 904.201.

(b) There will be no opportunity for a hearing if, with respect to the violation that forms the basis for the NOPS or NIDP, the permit holder had a previous opportunity to participate as a party in a judicial or administrative hearing, whether or not the permit holder did participate, and whether or not such a hearing was held.

§ 904.305 Final administrative decision.

(a) If no request for hearing is timely filed as provided in § 904.201(a), the NOPS or NIDP becomes effective as the final administrative decision and order of NOAA on the 30th day after service of the NOPS or NIDP or on the last day of any delay period granted.

(b) If a request for hearing is timely filed in accordance with § 904.201(a), the date of the final administrative decision is as provided in subpart C of this part.

SANCTIONS FOR NONCOMPLIANCE

§ 904.310 Nature of sanctions.

(a) NOAA may suspend, modify, or deny a permit if:

(1) A civil penalty has been assessed against the permit holder under subparts B and C of this part, but the permit holder has failed to pay the penalty, or has failed to comply with any term of a settlement agreement; or

(2) A criminal fine or other liability for violation of any of the statutes administered by NOAA has been imposed against the permit holder in a judicial proceeding, but payment has not been made.

(b) NOAA will suspend any permit issued to a foreign fishing vessel under section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act under the circumstances set forth in paragraph (a) of this section.

(c) NOAA will withhold any other permit for which the permit holder applies if either condition in paragraph (a) of this section is applicable.

§ 904.311 Compliance.

If the permit holder pays the fine or penalty in full or agrees to terms satisfactory to NOAA for payment:

(a) The suspension will not take effect;

(b) Any permit suspended under § 904.310 will be reinstated by order of NOAA; or

(c) Any application by the permit holder may be granted if the permit holder is otherwise qualified to receive the permit.

SANCTIONS FOR VIOLATIONS

§ 904.320 Nature of sanctions.

Subject to the requirements of this subpart, NOAA may take any of the following actions or combination of actions if a permit holder or permitted vessel violates a statute administered by NOAA, or any regulation promulgated or permit condition prescribed thereunder:

(a) *Revocation.* A permit may be cancelled, with or without prejudice to issuance of the permit in the future. Additional requirements for issuance of any future permit may be imposed.

(b) *Suspension.* A permit may be suspended either for a specified period of time or until stated requirements are met, or both. If contingent on stated requirements being met, the suspension is with prejudice to issuance of any permit until the requirements are met.

(c) *Modification.* A permit may be modified, as by imposing additional conditions and restrictions. If the permit was issued for a foreign fishing vessel under section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act, additional conditions and restrictions may be imposed on the application of the foreign nation involved and on any permits issued under such application.

§ 904.321 Reinstatement of permit.

(a) A permit suspended for a specified period of time will be reinstated automatically at the end of the period.

(b) A permit suspended until stated requirements are met will be reinstated only by order of NOAA.

§ 904.322 Interim action.

(a) To protect marine resources during the pendency of an action under this subpart, in cases of willfulness, or as otherwise required in the interest of public health, welfare, or safety, an Administrative Law Judge may order immediate suspension, modification, or withholding of a permit until a decision is made on the action proposed in a NOPS or NIDP.

(b) The Judge will order interim action under paragraph (a) of this section, only after finding that there exists probable cause to believe that the violation charged in the NOPS or NIDP was committed. The Judge's finding of probable cause, which will be summarized in the order, may be made:

(1) After review of the factual basis of the alleged violation, following an opportunity for the parties to submit their views (orally or in writing, in the Judge's discretion); or

(2) By adoption of an equivalent finding of probable cause or an admission in any administrative or judicial proceeding to which the recipient of the NOPS or NIDP was a party, including, but not limited to, a hearing to arrest or set bond for a vessel in a civil forfeiture action or an arraignment or other hearing in a criminal action. Adoption of a finding or admission under this paragraph may be made only after the Judge reviews pertinent portions of the transcript or other records, documents, or pleadings from the other proceeding.

(c) An order for interim action under paragraph (a) of this section is unappealable and will remain in effect until a decision is made on the NOPS or NIDP. Where such interim action has been taken, the Judge will expedite any hearing requested under § 904.304.

Subpart E—Written Warnings

§ 904.400 Purpose and scope.

This subpart sets forth the policy and procedures governing the issuance and use of written warnings by persons authorized to enforce the statutes administered by NOAA, and the review of such warnings. A written warning may be issued in lieu of assessing a civil penalty or initiating criminal prosecution for violation of any of the laws cited in § 904.1(c).

§ 904.401 Written warning as a prior offense.

A written warning may be used as a basis for dealing more severely with a subsequent offense, including, but not limited to, a violation of the same statute or an offense involving an activity that is related to the prior offense.

§ 904.402 Procedures.

(a) Any person authorized to enforce the laws listed in § 904.1(c) who finds a violation of one of the laws may issue a written warning to a violator in lieu of other law enforcement action that could be taken under the applicable statute.

(b) The written warning will:

(1) State that it is a ''written warning'';

(2) State the factual and statutory or regulatory basis for its issuance;

(3) Advise the violator of its effect in the event of a future violation; and

(4) Inform the violator of the right of review and appeal under § 904.403.

(c) NOAA will maintain a record of written warnings that are issued.

(d) If, within 120 days of the date of the written warning, further investigation indicates that the violation is more serious than realized at the time the written warning was issued, or that the violator previously committed a similar offense for which a written warning was issued or other enforcement action was taken, NOAA may withdraw the warning and commence other civil or criminal proceedings.

§ 904.403 Review and appeal of a written warning.

(a) If a person receives a written warning from an authorized officer, the person may seek review by Agency counsel. The request for review must be in writing and must present the facts and circumstances that explain or deny the violation described in the written warning. The request for review must be filed at the NOAA Office of the Assistant General Counsel for Enforcement and Litigation, 8484 Georgia Avenue, Suite 400, Silver Spring, MD 20910, within 60 days of receipt of the written warning. Agency counsel may, in his or her discretion, affirm, vacate, or modify the written warning and will notify the person of his or her determination. The Agency counsel's determination constitutes the final agency action, unless it is appealed pursuant to § 904.403(b).

(b) If a person receives a written warning from Agency counsel, or receives a determination from Agency counsel affirming a written warning issued by an authorized officer, the person may appeal to the NOAA Deputy General Counsel. The appeal must be filed at the NOAA Office of the General Counsel, Herbert Hoover Office Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, within 60 days of receipt of the written warning issued by Agency counsel, or the determination from Agency counsel affirming a written warning issued by an authorized officer.

(1) An appeal from an Agency counsel issued written warning must be in writing and must present the facts and circumstances that explain or deny the violation described in the written warning.

(2) An appeal from an Agency counsel's determination affirming a written warning issued by an authorized officer must be in writing and include a copy of the Agency counsel's determination affirming the written warning.

(c) The NOAA Deputy General Counsel may, in his or her discretion, affirm, vacate, or modify the written warning and will notify the person of the determination. The NOAA Deputy General Counsel's determination constitutes the final agency action.

Subpart F—Seizure and Forfeiture Procedures

§ 904.500 Purpose and scope.

(a) This subpart sets forth procedures governing the release, abandonment, forfeiture, remission of forfeiture, or return of seized property (including property seized and held solely as evidence) that is subject to forfeiture under the various statutes administered by NOAA.

(b) Except as provided in this subpart, these regulations apply to all seized property subject to forfeiture under the statutes listed in subpart A of this part. This subpart is in addition to, and not in contradiction of, any special rules regarding seizure, holding or disposition of property seized under these statutes.

§ 904.501 Notice of seizure.

Within 60 days from the date of the seizure, NOAA will mail notice of the seizure by registered or certified mail, return receipt requested, to the owner or consignee, if known or easily ascertainable, or other party that the facts of record indicate has an interest in the seized property. In cases where the property is seized by a state or local law enforcement agency notice will be given in the above manner within 90 days from the date of the seizure. The notice will describe the seized property and state the time, place and reason for the seizure, including the provisions of law alleged to have been violated. The notice will inform each interested party of his or her right to file a claim to the seized property, and state a date by which a claim must be filed, which may not be less than 35 days after the date the notice is mailed. The notice may be combined with a notice of the sale of perishable fish issued under § 904.505. If a claim is filed the case will be referred promptly to the United States Attorney for institution of judicial proceedings.

§ 904.502 Bonded release of seized property.

(a) As authorized by applicable statute, at any time after seizure of any property, NOAA may, in its sole discretion, release any seized property upon deposit with NOAA of the full value of the property or such lesser amount as NOAA deems sufficient to protect the interests served by the applicable statute. In addition, NOAA may, in its sole discretion, accept a bond or other security in place of fish, wildlife, or other property seized. The

bond will contain such conditions as NOAA deems appropriate.

(b) Property may be released under this section only if possession thereof will not violate or frustrate the purpose or policy of any applicable law or regulation. Property that will not be released includes, but is not limited to:

(1) Property in which NOAA is not satisfied that the petitioner has a substantial interest;

(2) Property whose entry into the commerce of the United States is prohibited;

(3) Live animals, except in the interest of the animals' welfare; or

(4) Property whose release appears to NOAA not to be in the best interest of the United States or serve the purposes of the applicable statute.

(c) If NOAA grants the request, the amount paid by the petitioner will be deposited in a NOAA suspense account. The amount so deposited will for all purposes be considered to represent the property seized and subject to forfeiture, and payment of the amount by petitioner constitutes a waiver by petitioner of any claim rising from the seizure and custody of the property. NOAA will maintain the money so deposited pending further order of NOAA, order of a court, or disposition by applicable administrative proceedings.

(d) A request for release need not be in any particular form, but must set forth the following:

(1) A description of the property seized;

(2) The date and place of the seizure;

(3) The requester's interest in the property, supported as appropriate by bills of sale, contracts, mortgages, or other satisfactory evidence;

(4) The facts and circumstances relied upon by the requester to justify the remission or mitigation;

(5) An offer of payment to protect the United States' interest that requester makes in return for release;

(6) The signature of the requester, his or her attorney, or other authorized agent; and

(7) A request to defer administrative or judicial forfeiture proceedings until completion of all other related judicial or administrative proceedings (including any associated civil penalty or permit sanction proceedings).

§ 904.503 Appraisement.

NOAA will appraise seized property to determine its domestic value. Domestic value means the price at which such or similar property is offered for sale at the time and place of appraisement in the ordinary course of trade. If there is no market for the seized property at the place of appraisement, the value in the principal market nearest the place of appraisement will be used. If the seized property may not lawfully be sold in the United States, its domestic value will be determined by other reasonable means.

§ 904.504 Administrative forfeiture proceedings.

(a) *When authorized.* This section applies to property that is determined under § 904.503 to have a value of $500,000 or less, and that is subject to administrative forfeiture under the applicable statute. This section does not apply to conveyances seized in connection with criminal proceedings.

(b) Procedure. (1) If seized property is appraised at a value of $500,000 or less, instead of referring the matter to the United States Attorney, NOAA will publish a notice of proposed forfeiture once a week for at least three successive weeks in a newspaper of general circulation in the Federal judicial district in which the property was seized. However, if the value of the seized property does not exceed $1,000, the notice may be published by posting for at least three successive weeks in a conspicuous place accessible to the public at the National Marine Fisheries Service Enforcement Office, United States District Court, or the United States Customs House nearest the place of seizure, with the date of posting indicated on the notice. In addition, a reasonable effort will be made to serve the notice personally, or by registered or certified mail, return receipt requested, on each person whose identity, address and interest in the property are known or easily ascertainable.

(2) The notice of proposed forfeiture will:

(i) Describe the seized property, including any applicable registration or serial numbers;

(ii) State the time, place and reason for the seizure, including the provisions of law allegedly violated; and

(iii) Describe the rights of an interested person to file a claim to the property (including the right to petition to remit or mitigate the forfeiture).

(3)(i) Except as provided in paragraph (b)(4) of this section, any person claiming the seized property may file a claim with NOAA, at the address indicated in the notice, within 30 days of the date the final notice was published or posted. The claim must state the claimant's interest in the property.

(ii) Filing a claim does not entitle the claimant to possession of the property. However, it does stop administrative forfeiture proceedings.

(iii) If the claim is filed timely in accordance with this section, NOAA will refer the matter to the Attorney General to institute forfeiture proceedings in the appropriate United States District Court.

(4) If a claim is not filed within 30 days of final notice published or posted in accordance with this section, NOAA will declare the property forfeited. The declaration of forfeiture will be in writing and will be served by registered or certified mail, return receipt requested, on each person whose identity and address and prior interest in the seized property are known or easily ascertainable. The declaration will describe the property and state the time, place, and reason for its seizure, including the provisions of law violated. The declaration will identify the notice of proposed forfeiture, describing the dates and manner of publication of the notice and any efforts made to serve the notice personally or by mail. The declaration will state that in response to the notice a proper claim was not timely received by the proper office from any claimant, and that therefore all potential claimants are deemed to admit the truth of the allegations of the notice. The declaration shall conclude with an order of condemnation and forfeiture of the property to the United States for disposition according to law. All forfeited property will be subject to disposition as authorized by law and regulations of NOAA.

(5) If the appraised value of the property is more than $500,000, or a timely and satisfactory claim for property appraised at $500,000 or less is submitted to NOAA, the matter will be referred to the Attorney General to institute in rem proceedings in the appropriate United States District Court.

§ 904.505 Summary sale.

(a) In view of the perishable nature of fish, any person authorized to enforce a statute administered by NOAA may, as authorized by law, sell or cause to be sold, and any person may purchase, for not less than its domestic fair market value, fish seized under such statute.

(b) Any person purchasing fish subject to this section must deliver the proceeds of the sale to a person authorized to enforce a statute administered by NOAA immediately upon request of such authorized person. Anyone who does not so deliver the proceeds may be subject to penalties under the applicable statute or statutes.

(c) NOAA will give notice of the sale by registered or certified mail, return receipt requested, to the owner or consignee, if known or easily ascertainable, or to any other party that

the facts of record indicate has an interest in the seized fish, unless the owner or consignee or other interested party has otherwise been personally notified. Notice will be sent either prior to the sale, or as soon thereafter as practicable.

(d) The proceeds of the sale, after deducting any reasonable costs of the sale, will be subject to any administrative or judicial proceedings in the same manner as the seized fish would have been, including an action in rem for the forfeiture of the proceeds. Pending disposition of such proceedings, the proceeds will, as appropriate, either be deposited in a NOAA suspense account or submitted to the appropriate court.

(e) Seizure and sale of fish is without prejudice to any other remedy or sanction authorized by law.

§ 904.506 Remission of forfeiture and restoration of proceeds of sale.

(a) *Application of this section.* (1) This section establishes procedures for filing with NOAA a petition for relief from forfeitures incurred, or alleged to have been incurred, and from potential forfeiture of seized property, under any statute administered by NOAA that authorizes the remission or mitigation of forfeitures.

(2) Although NOAA may properly consider a petition for remission or mitigation of forfeiture and restoration of proceeds of sale along with other consequences of a violation, the remission or mitigation of a forfeiture and restoration of proceeds is not dispositive of any criminal charge filed, civil penalty assessed, or permit sanction proposed, unless NOAA expressly so states. Remission or mitigation of forfeiture and restoration of proceeds is in the nature of executive clemency and is granted in the sole discretion of NOAA only when consistent with the purposes of the particular statute involved and this section.

(3) If no petition is timely filed, or if the petition is denied, prior to depositing the proceeds NOAA may use the proceeds of sale to reimburse the government for any costs that by law may be paid from such sums.

(4) If NOAA remits the forfeiture and the forfeited property has not been sold, then restoration may be conditioned upon payment of any applicable costs as defined in this subpart.

(b) *Petition for relief from forfeiture.* (1) Any person claiming an interest in any property which has been or may be administratively forfeited under the provisions of this section may, at any time after seizure of the property, but no later than 90 days after the date of forfeiture, petition the Assistant General Counsel for Enforcement and Litigation, NOAA/GCEL, 8484 Georgia Avenue, Suite 400, Silver Spring, Maryland 20910, for a remission or mitigation of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by the petitioner.

(2) The petition need not be in any particular form, but must set forth the following:

(i) A description of the property seized;

(ii) The date and place of the seizure;

(iii) The petitioner's interest in the property, supported as appropriate by bills of sale, contracts, mortgages, or other satisfactory evidence;

(iv) The facts and circumstances relied upon by the petitioner to justify the remission or mitigation of forfeiture and restoration of proceeds. If the claim is made after the property is forfeited, the petitioner must provide satisfactory proof that the petitioner did not know of the seizure prior to the declaration or condemnation of forfeiture, was in such circumstances as prevented him or her from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to violate the applicable statute on the part of the petitioner; and

(v) The signature of the petitioner, his or her attorney, or other authorized agent.

(3) NOAA will not consider a petition for remission or mitigation of forfeiture and restoration of proceeds while a forfeiture proceeding is pending in federal court. Once such a case is referred to the Attorney General for institution of judicial proceedings, and until the proceedings are completed, any petition received by NOAA will be forwarded to the Attorney General for consideration.

(4) A false statement in a petition will subject petitioner to prosecution under 18 U.S.C. 1001.

(c) *Investigation.* NOAA will investigate the facts and circumstances shown by the petition and seizure, and may in this respect appoint an investigator to examine the facts and prepare a report of investigation.

(d) *Determination of petition.* (1) After investigation under paragraph (c) of this section, NOAA will make a determination on the matter and notify the petitioner. NOAA may remit or mitigate the forfeiture, on such terms and conditions as are deemed reasonable and just under the applicable statute and the circumstances.

(2) Unless NOAA determines no valid purpose would be served, NOAA will condition a determination to remit or mitigate a forfeiture upon the petitioner's submitting an agreement, in a form satisfactory to NOAA, to hold the United States and its officers or agents harmless from any and all claims based on loss of or damage to the seized property or that might result from grant of remission or mitigation and restoration of proceeds. If the petitioner is not the beneficial owner of the property, or if there are others with a proprietary interest in the property, NOAA may require the petitioner to submit such an agreement executed by the beneficial owner or other interested party. NOAA may also require that the property be promptly exported from the United States.

(e) *Compliance with the determination.* A determination by NOAA to remit or mitigate the forfeiture and restore the proceeds upon stated conditions, as upon payment of a specified amount, will be effective for 60 days after the date of the determination. If the petitioner does not comply with the conditions within that period in a manner prescribed by the determination, or make arrangements satisfactory to NOAA for later compliance, the remission or mitigation and restoration of proceeds will be void, and judicial or administrative forfeiture proceedings will be instituted or resumed.

(f) *Appropriated property.* If forfeited property that is the subject of a claim for restoration of proceeds has been appropriated for official use, retention by the government will be regarded as sale for the purposes of this section.

§ 904.507 Recovery of certain storage costs.

If any fish, wildlife, or evidentiary property is seized and forfeited under the Endangered Species Act, 16 U.S.C. 1531 through 1543, any person whose act or omission was the basis for the seizure may be charged a reasonable fee for expenses to the United States connected with the transfer, board, handling or storage of such property. If any fish or wildlife is seized in connection with a violation of the Lacey Act Amendments of 1981, 16 U.S.C. 3371 through 3378, or any property is seized in connection with a violation of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 through 1882, any person convicted thereof, or assessed a civil penalty therefor, may be assessed a reasonable fee for expenses of the United States connected with the storage, care and maintenance of such property. Within a reasonable time after forfeiture, NOAA will send to such

person by registered or certified mail, return receipt requested, a bill for such fee. The bill will contain an itemized statement of the applicable costs, and instructions on the time and manner of payment. Payment must be made in accordance with the bill. If the recipient of the bill objects to the reasonableness of the costs assessed he or she may, within 30 days of receipt, file written objections with NOAA at the address stated in the bill. NOAA will promptly review the written objections and within 30 days mail the final determination to the party who filed them. NOAA's determination will constitute final agency action on the matter.

§ 904.508 Voluntary forfeiture by abandonment.

(a) The owner of seized property may voluntarily forfeit all right, title, and interest in the property by abandoning it to NOAA. Voluntary forfeiture by abandonment under this section may be accomplished by various means, including, but not limited to: expressly waiving any claim to the property by voluntarily relinquishing any right, title, and interest by written agreement or otherwise; or refusing or otherwise avoiding delivery of returned property; or failing to respond within 90 days of service of any certified or registered notice regarding a return of seized property issued under § 904.510(b).

(b) Property will be declared finally forfeited by abandonment, without recourse, upon a finding of abandonment by NOAA.

§ 904.509 Disposal of forfeited property.

(a) *Delivery to Administrator.* Upon forfeiture of any fish, wildlife, parts or products thereof, or other property to the United States, including the abandonment or waiver of any claim to any such property, it will be delivered to NOAA for storage or disposal according to the provisions of this section.

(b) *Disposal.* Disposal may be accomplished by one of the following means unless the property is the subject of a petition for remission or mitigation of forfeiture or disposed of by court order:

(1) Return to the wild;

(2) Use by NOAA or transfer to another government agency for official use;

(3) Donation or loan;

(4) Sale; or

(5) Destruction.

(c) *Purposes of disposal.* Disposal procedures may be used to alleviate overcrowding of evidence storage facilities; to avoid the accumulation of seized property where disposal is not otherwise accomplished by court order; to address the needs of governmental agencies and other institutions and organizations for such property for scientific, educational, and public display purposes; and for other valid reasons. In no case will property be used for personal purposes, either by loan recipients or government personnel.

(d) *Disposal of evidence.* Property that is evidence may be disposed of only after authorization by the NOAA Office of General Counsel. Disposal approval usually will not be given until the case involving the evidence is closed, except that perishable property may be authorized for disposal sooner.

(e) *Loans*—(1) *To institutions.* Property approved for disposal may be loaned to institutions or organizations requesting such property for scientific, educational, or public display purposes. Property will be loaned only after execution of a loan agreement which provides, among other things, that the loaned property will be used only for noncommercial scientific, educational, or public display purposes, and that it will remain the property of the United States government, which may demand its return at any time. Parties requesting the loan of property must demonstrate the ability to provide adequate care and security for the property. Loans may be made to responsible agencies of foreign governments in accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

(2) *To individuals.* Property generally will not be loaned to individuals not affiliated with an institution or organization unless it is clear that the property will be used in a noncommercial manner, and for scientific, educational, or public display purposes which are in the public interest.

(3) *Selection of loan recipients.* Recipients of property will be chosen so as to assure a wide distribution of the property throughout the scientific, educational, public display and museum communities. Other branches of NMFS, NOAA, the Department of Commerce, and other governmental agencies will have the right of first refusal of any property offered for disposal. The Administrator may solicit applications, by publication of a notice in the **Federal Register**, from qualified persons, institutions, and organizations who are interested in obtaining the property being offered. Such notice will contain a statement as to the availability of specific property for which transferees are being sought, and instructions on how and where to make application. Applications will be granted in the following order: other offices of NMFS, NOAA, and the Department of Commerce; U.S. Fish and Wildlife Service; other Federal agencies; other governmental agencies; scientific, educational, or other public or private institutions; and private individuals.

(4) *Loan agreement.* Property will be transferred under a loan agreement executed by the Administrator and the borrower. Any attempt on the part of the borrower to retransfer property, even to another institution for related purposes, will violate and invalidate the loan agreement, and entitle the United States to immediate repossession of the property, unless the prior approval of the Administrator has been obtained under § 904.510(d)(5). Violation of the loan agreement may also subject the violator to the penalties provided by the laws governing possession and transfer of the property.

(5) *Temporary reloans; documents to accompany property.* Temporary reloans by the borrower to another qualified borrower (as for temporary exhibition) may be made if the Administrator is advised in advance by the borrowers. Temporary loans for more than thirty days must be approved in advance in writing by the Administrator. A copy of the original loan agreement, and a copy of the written approval for reloan, if any, must accompany the property whenever it is temporarily reloaned or is shipped or transported across state or international boundaries.

(f) *Sale.* (1) Any fish, wildlife, parts or products thereof, and other property which has been voluntarily forfeited by abandonment to NOAA may be sold or offered for sale, with the exception of any species or property which is otherwise prohibited from being sold at the time it is to be sold or offered for sale.

(2) Property will be sold in accordance with current Federal Property Management Regulations (41 CFR chapter 101) or United States Customs laws and regulations, except that NOAA may:

(i) Sell at fair market value perishable fish pursuant to the summary sales provisions of 15 CFR 904.505; and

(ii) Sell, destroy, or otherwise dispose of property for which it is determined the expense of keeping is disproportionate to the value thereof.

(3) The proceeds of sale may be used to reimburse NOAA for any costs which by law NOAA is authorized to recover or to pay any rewards which by law may be paid from sums that NOAA receives.

(g) *Destruction.* (1) Property not otherwise disposed of may be destroyed.

(2) Destruction will be accomplished in accordance with the requirements of 41 CFR Subpart 101–45.9.

(3) When destroyed, the fact, manner, and date of destruction and the type and quantity destroyed must be certified by the official actually destroying the property.

(4) No duly authorized officer of NOAA shall be liable for the destruction or other disposition of property made pursuant to this section.

(h) *Record-keeping.* A disposal form will be completed each time property is disposed of pursuant to the policy and procedure established herein, and will be retained in the case file for the property. These forms will be available to the public.

§ 904.510 Return of seized property.

(a) *Return.* In cases where NOAA, in its sole discretion, determines that forfeiture of seized property would not be in the best interest of the Government, NOAA will make a reasonable attempt to determine the party that the facts of record indicate has a predominant ownership interest in the seized property and, provided such a determination can be made, will arrange for return of the seized property to that party by appropriate means.

(b) *Notice.* NOAA will mail notice of the return of property by registered or certified mail, return receipt requested, to the owner, consignee, or other party the facts of record indicate has an interest in the seized property. The notice will describe the seized property, state the time, place, and reason for the seizure and return, and will identify the owner or consignee, and if appropriate, the bailee of the seized property. The notice of the return also will state that the party to whom the property is being returned is responsible for any distribution of the property to any party who holds a valid claim, right, title or interest in receiving the property, in whole or in part. The notice also will provide that on presentation of the notice and proper identification, and the signing of a receipt provided by NOAA, the seized property is authorized to be released.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD05–03–036]

RIN 1625–AA01

Baltimore Harbor Anchorage Project

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the geographic coordinates and modify the regulated use of the anchorages in Baltimore Harbor, MD. Since publication of the previous supplemental notice of proposed rulemaking (SNPRM), the Coast Guard also proposes to change the requirements for visitors on board vessels carrying Certain Dangerous Cargoes (CDC) and to reinstate time restrictions, inadvertently excluded from the notice of proposed rulemaking (NPRM) and previous SNPRM, for vessels anchored in designated anchorage grounds. This supplemental notice of proposed rulemaking solicits comments for those changes plus all original changes in the NPRM and the two changes published in the first SNPRM. An explanation of the additional changes can be found in the ''Discussion of Rule'' section of this document.

DATES: Comments and related material must reach the Coast Guard on or before December 13, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–03–036 and are available for inspection or copying at Commander, Fifth Coast Guard District (oan), 431 Crawford Street, Portsmouth, VA, 23704–5004 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Timothy Martin, Fifth Coast Guard District Aids to Navigation and Waterways Management Branch, (757) 398–6285, email: *trmartin@lantd5.uscg.mil.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–03–036), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Regulatory Information

On July 2, 2003, we published a notice of proposed rulemaking (NPRM) (68 FR 39503) entitled Baltimore Harbor Anchorage Project in the **Federal Register**. We received one phone call commenting on the NPRM. No public hearing was requested, and none was held.

On January 14, 2004 we published a supplemental notice of proposed rulemaking (SNPRM) (69 FR 2095) also entitled Baltimore Harbor Anchorage Project in the **Federal Register**. Since then some point coordinates outlining Anchorages 1, 2, 5, 6, and 7 have been refined through telephone and email correspondences with the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Army Corps of Engineers better aligning the new anchorages with the Federal Navigation project.

In the NPRM and previous SNPRM, with the exception of specific time limitations in three of the anchorages, the regulatory text omitted the language from the current regulation regarding the length of time a vessel may remain anchored in the general anchorages. The changes to this rule do not affect the time limitations set out in the current regulation and therefore, that language will be reinstated in the regulatory text in the final rule.

Background and Purpose

The U.S. Army Corps of Engineers received Congressional authorization for the Baltimore Harbor Anchorage project in September 2001. The objective of this project was to increase the project depths of Anchorages 3 and 4 to 42ft and 35ft respectively. The original Federal anchorage project for Baltimore Harbor was designed to accommodate cargo ships with maximum drafts of 33ft and lengths of 550ft. The new dimensions of the anchorages were changed to accommodate larger ships calling on the Port that routinely approach 1000ft length, with drafts of 36 to 38 feet or more. The new

coordinates established for Anchorages 2, 3, and 4, also accommodate the widening of the Dundalk West Channel, a north/south Federal navigation project located between Anchorage 3 and Anchorage 4 and widening of the Dundalk East Channel, bordering Anchorage 4. Anchorage 3 was divided into two sections: Anchorage 3 Lower (2200′ × 2200′ × 42ft mean lower low water (MLLW)) and Anchorage 3 Upper (1800′ × 1800′ × 42ft MLLW). Anchorage 4 was also modified (1850′ × 1800′ × 35ft MLLW).

Dredging for the Baltimore Harbor Anchorage was completed in May 2003.

Discussion of Rule

Since the previous SNPRM was published, the Coast Guard proposed additional changes by refining the positions of three coordinates surrounding Anchorages 2. The coordinates appeared to enter or come close to entering the Federal navigation project when viewed in automatic computer aided drafting (AUTOCAD) software. The proposed changes will remove any ambiguity in boundary lines when depicted on NOAA charts. The following three points outlining Anchorage 2 were changed:

Latitude	*Longitude*
(1) 39°14′56.1″ N	76°33′37.1″ W
(2) 39°15′14.8″ N	76°32′59.6″ W
(3) 39°14′41.1″ N	76°32′27.2″ W

The new positions are:

Latitude	*Longitude*
(1) 39°14′56.96″ N	76°33′37.15″ W
(2) 39°15′14.19″ N	76°32′57.76″ W
(3) 39°14′41.37″ N	76°32′27.38″ W

Since the width of Fort McHenry Channel was decreased from 800 feet to 700 feet Anchorage 1 has been positioned closer to the channel using USACE coordinates to facilitate access to that anchorage. The four points defining Anchorage 1 were changed and are reflected in the proposed regulation.

Although not maintained by the USACE the coordinates defining Anchorages 5, 6, and, 7 have been adjusted to better align those anchorages with the Federal navigation project.

The language requiring non-crewmembers to carry a pass issued by the Captain of the Port (COTP) while visiting ships at anchor carrying dangerous cargo or Class I (explosive) materials has been removed. The Coast Guard may include the requirement to carry a pass in the future. The remaining language allows the COTP to request all visitors to anchored vessels carrying dangerous cargo to carry a form of identification prescribed in the vessel's security plan. This proposed change will incorporate language consistent with other anchorage regulations.

Time restrictions inadvertently left out of the NPRM and previous SNPRM have been reinstated throughout the regulation. In § 110.158 paragraph (a) time restrictions are listed in subparagraphs (1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), and (7)(B).

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The deepening of Anchorage 3 and Anchorage 4 within the Port of Baltimore accommodates deep draft vessels waiting for an open berth. The Coast Guard does not expect that these new regulations will adversely impact maritime commerce.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed would not have a significant economic impact on a substantial number of small entities. This proposed may affect the following entities, some of which might be small entities: The owners or operators of vessels used for chartering, taxi, ferry services, or any other marine traffic that transit this area of Fort McHenry Channel in Baltimore Harbor. Changes to Anchorage No. 3 and Anchorage No. 4 may change the vessel routing through this area of the harbor. Deepening the anchorages and changing the coordinates for the anchorages will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic can pass safely around the new anchorage areas. The new coordinates for the anchorages are a change in dimension, the size of which will remain proportional to its current size, and their location will not interfere with commercial traffic.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the proposed so that they could better evaluate its effects on them and participate in the rulemaking process. If the proposed would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Timothy Martin at the address listed (see **ADDRESSES**).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for Federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such expenditure, we do discuss possible effects in the section titled Small Entities in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation,

eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create and environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2. of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation. This rule changes the size of Anchorage No. 2, Anchorage No. 3 and Anchorage No. 4 and modifies the regulated uses of these anchorages.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 110

Anchorage Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. Revise § 110.158 to read as follows:

§ 110.158 Baltimore Harbor, MD.

All positions in this section use North American Datum 1983.

(a) Anchorage Grounds

(1) *Anchorage No. 1, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°15′13.51″ N	76°34′07.76″ W
39°15′11.01″ N	76°34′11.69″ W
39°14′52.98″ N	76°33′52.67″ W
39°14′47.90″ N	76°33′40.73″ W

(ii) No vessel shall remain in this anchorage for more than 12 hours without permission from the Captain of the Port.

(2) *Anchorage No. 2, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′46.23″ N	76°33′25.82″ W
39°14′56.96″ N	76°33′37.15″ W
39°15′08.55″ N	76°33′37.65″ W
39°15′19.28″ N	76°33′24.49″ W
39°15′19.33″ N	76°33′14.32″ W
39°15′14.19″ N	76°32′57.76″ W
39°15′06.87″ N	76°32′45.48″ W
39°14′41.37″ N	76°32′27.38″ W
39°14′30.93″ N	76°32′33.52″ W
39°14′46.27″ N	76°32′49.69″ W
39°14′43.76″ N	76°32′53.62″ W
39°14′57.51″ N	76°33′08.13″ W

(ii) No vessel shall remain in this anchorage for more than 72 hours without a written permit from the Captain of the Port.

(3) *Anchorage No. 3, Upper, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′32.48″ N	76°33′11.31″ W
39°14′46.23″ N	76°33′25.82″ W
39°14′57.51″ N	76°33′08.13″ W
39°14′43.76″ N	76°32′53.62″ W

(ii) No vessel shall remain in this anchorage for more than 24 hours without permission from the Captain of the Port.

(4) *Anchorage No. 3, Lower, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′32.48″ N	76°33′11.31″ W
39°14′46.27″ N	76°32′49.69″ W
39°14′30.93″ N	76°32′33.52″ W
39°14′24.40″ N	76°32′39.87″ W
39°14′15.66″ N	76°32′53.58″ W

(ii) No vessel shall remain in this anchorage for more than 72 hours without a written permit from the Captain of the Port.

(5) *Anchorage No. 4, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°13′52.91″ N	76°32′29.60″ W
39°14′05.91″ N	76°32′43.30″ W
39°14′07.30″ N	76°32′43.12″ W
39°14′17.96″ N	76°32′26.41″ W
39°14′05.32″ N	76°32′13.09″ W
39°14′00.46″ N	76°32′17.77″ W

(ii) No vessel shall remain in this anchorage for more than 72 hours without a written permit from the Captain of the Port.

(6) *Anchorage No. 5, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′07.89″ N	76°32′58.23″ W

Latitude	*Longitude*
39°13′34.82″ N	76°32′23.66″ W
39°13′22.25″ N	76°32′28.90″ W
39°13′21.20″ N	76°33′11.94″ W

(ii) No vessel shall remain in this anchorage for more than 72 hours without a written permit from the Captain of the Port.

(7) *Anchorage No. 6, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°13′42.98″ N	76°32′19.11″ W
39°13′20.65″ N	76°31′55.58″ W
39°13′34.00″ N	76°31′33.50″ W
39°14′01.95″ N	76°32′02.65″ W
39°13′51.01″ N	76°32′18.71″ W

(ii) No vessel shall remain in this anchorage for more than 72 hours without a written permit from the Captain of the Port.

(8) *Anchorage No. 7, Dead ship anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°13′00.40″ N	76°34′10.40″ W
39°13′13.40″ N	76°34′10.81″ W
39°13′13.96″ N	76°34′05.02″ W
39°13′14.83″ N	76°33′29.80″ W
39°13′00.40″ N	76°33′29.90″ W

(ii) The primary use of this anchorage is to lay up dead ships. Such use has priority over other uses. A written permit from the Captain of the Port must be obtained prior to the use of this anchorage for more than 72 hours.

(b) *Definitions.* As used in this section:

Class 1 (explosive) materials means Division 1.1, 1.2, 1.3, and 1.4 explosives, as defined in 49 CFR 173.50.

Dangerous cargo means certain dangerous cargo as defined in § 160.203 of this title.

(c) *General regulations.* (1) Except as otherwise provided, this section applies to vessels over 20 meters long and all vessels carrying or handling dangerous cargo or Class 1 (explosive) materials while anchored in an anchorage ground described in this section.

(2) Except in cases where unforeseen circumstances create conditions of imminent peril, or with the permission of the Captain of the Port, no vessel shall be anchored in Baltimore Harbor and Patapsco River outside of the anchorage areas established in this section for more than 24 hours. No vessel shall anchor within a tunnel, cable or pipeline area shown on a government chart. No vessel shall be moored, anchored, or tied up to any pier, wharf, or other vessel in such manner as to extend into established channel limits. No vessel shall be positioned so as to obstruct or endanger the passage of any other vessel.

(3) Except in an emergency, a vessel that is likely to sink or otherwise become a menace or obstruction to navigation or the anchoring of other vessels may not occupy an anchorage, unless the vessel obtains a permit from the Captain of the Port.

(4) The Captain of the Port may grant a revocable permit to a vessel for a habitual use of an anchorage. Only the vessel that holds the revocable permit may use the anchorage during the period that the permit is in effect.

(5) Upon notification by the Captain of the Port to shift its position, a vessel at anchor shall get underway and shall move to its new designated position within 2 hours after notification.

(6) The Captain of the Port may prescribe specific conditions for vessels anchoring within the anchorages described in this section, including, but not limited to, the number and location of anchors, scope of chain, readiness of engineering plant and equipment, usage of tugs, and requirements for maintaining communication guards on selected radio frequencies.

(7) No vessel at anchor or at a mooring within an anchorage may transfer oil to or from another vessel unless the vessel has given the Captain of the Port the four hours advance notice required by § 156.118 of this title.

(8) No vessel shall anchor in a ''dead ship'' status (propulsion or control unavailable for normal operations) without prior approval of the Captain of the Port.

(d) *Regulations for vessels handling or carrying dangerous cargoes or Class 1 (explosive) materials.*

(1) This paragraph (d) applies to every vessel, except a U.S. naval vessel, handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(2) The Captain of the Port may require every person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, to hold a form of identification prescribed in the vessel's security plan.

(3) Each person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, shall present the identification prescribed by paragraph (d)(2) of this section to any Coast Guard Boarding Officer who requests it.

(4) Each non-self-propelled vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials must have a tug in attendance at all times while at anchor.

(5) Each vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while at anchor must display by day a bravo flag in a prominent location and by night a fixed red light.

Dated: September 28, 2004.

Ben Thomason III,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 04–22745 Filed 10–8–04; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–04–179]

RIN 1625–AA09

Drawbridge Operation Regulations; Mantua Creek, Paulsboro, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the regulations that govern the operation of the S.R. 44 bridge over Mantua Creek, at mile 1.7, in Paulsboro, New Jersey. The bridge will be closed to navigation from 8 a.m. on September 12, 2005, through 6 p.m. on December 9, 2005. The extensive structural, mechanical, and electrical repairs and improvements necessitate this closure.

DATES: Comments and related material must reach the Coast Guard on or before November 26, 2004.

ADDRESSES: You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, VA 23704–5004. The Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anton Allen, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6227.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05–04–179 indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (obr), Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The New Jersey Department of Transportation (NJDOT) owns and operates the S.R. 44 Bridge over Mantua Creek in Paulsboro, NJ. The current regulations set out in 33 CFR 117.729 require the draw to open on signal from March 1 through November 30 from 7 a.m. to 11 p.m., and to open on signal at all other times upon four hours notice.

Parsons Brinckerhoff, a design consultant, on behalf of NJDOT requested a temporary change to the existing regulations for the S.R. 44 Bridge over Mantua Creek to facilitate necessary repairs. The repairs consist of structural rehabilitation and various mechanical, electrical repairs and improvements. To facilitate repairs, the vertical lift span must be closed to vessel traffic from 8 a.m. on September 12, 2005, through 6 p.m. on December 9, 2005.

The Coast Guard has reviewed bridge opening data provided by the New Jersey Department of Transportation. The data, from years 2000 to 2002, shows a substantial decrease in the numbers of bridge openings and vessel traffic transiting the area after the Labor Day weekend. Based on the data provided, the proposed closure dates will have minimal impact on vessel traffic.

Discussion of Proposed Rule

The Coast Guard proposes to amend the regulations governing the S.R. 44 Bridge over Mantua Creek, mile 1.7, which currently opens on signal from March 1 through November 30 from 7 a.m. to 11 p.m., and open on demand at all other times upon four hours notice. The Coast Guard proposes to suspend 33 CFR § 117.729(b) and insert this new specific regulation at 33 CFR § 117.729(c).

Paragraph (c) would allow the draw to be closed to vessel traffic during the rehabilitation project from 8 a.m. on September 12, 2005, through 6 p.m. on December 9, 2005.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We established this conclusion based on historical data, and on the fact that the proposed closure dates support minimal impact due to the reduced number of vessels requiring transit through the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The off-season closure dates proposed for the bridge are designed to minimize the number of small entities affected.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 8 a.m. on September 12, 2005 until 6 p.m. on December 9, 2005, in § 117.729, suspend paragraph (b) and add a new paragraph (c) to read as follows:

§ 117.729 Mantua Creek.

* * * * *

(c) From 8 a.m. on September 12, 2005, through 6 p.m. on December 9, 2005, the S.R. 44 Bridge, mile 1.7, at Paulsboro, may remain closed to navigation.

Dated: September 22, 2004.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 04–22848 Filed 10–8–04; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–04–168]

RIN 1625–AA09

Drawbridge Operation Regulations; Christina River, Wilmington, DE

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of the Norfolk Southern (NS) Railroad Bridge across Christina River, at mile 1.4, in Wilmington, DE. The proposed change would maintain the bridge's current level of operational capabilities and continue to provide for the reasonable needs of rail transportation and vessel navigation.

DATES: Comments and related material must reach the Coast Guard on or before December 13, 2004.

ADDRESSES: You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, VA 23704–5004. The Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anton Allen, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6227.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05–04–168, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like a return receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all submittals received during the comment

period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (obr), Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Norfolk Southern Corporation (NSC), who owns and operates this swing-type bridge at mile 1.4 across the Christina River, in Wilmington, DE, requested a change to the current operating procedures set out in 33 CFR part 117.237(a)(2) which requires the draw to open on signal, except that the draw of a railroad bridge need not be opened when a train is in the bridge block, approaching the bridge, or within 5 minutes of the passage of a passenger train; but in no event shall the opening of the draw be delayed more than 10 minutes. This proposed rule would allow the NS Railroad Bridge to remain open to vessel traffic, closing only for train crossings and periodic maintenance. This proposed rule would also allow the NS Railroad Bridge to be operated from a remote location at the Harrisburg, PA Dispatcher's Office.

NSC has installed closed circuit cameras in the area of the bridge and directly beneath the bridge, mounted on the center pier fender systems on both sides. Infrared sensors have also been installed to cover the swing radius of the bridge. This equipment enhances the controller's ability to monitor vessel traffic from the remote location. The controller will also monitor marine channel 13.

This change is being requested to make the operation of the NS Railroad Bridge more efficient. It will save operational costs by eliminating the continuous presence of bridge tenders, and is expected to decrease maintenance costs. In addition, the draw being left in the open position most of the time will provide for greater flow of vessel traffic than the current regulation.

Discussion of Proposed Rule

The Coast Guard proposes to amend the regulations governing the NS Railroad Bridge, at mile 1.4, in Wilmington, DE, which currently operates on signal. The Coast Guard proposes to insert this new specific regulation at 33 CFR 117.237(b). Paragraph (b) would contain the proposed rule for the NS Railroad Bridge, at mile 1.4, in Wilmington, DE. The rule would allow the draw of the bridge to be operated remotely by the off-site controller at the Harrisburg, PA Dispatcher's Office.

The draw would remain in the open position for navigation and shall only be closed for the passage of trains or periodic maintenance authorized in accordance with subpart A of this part.

Before the NS Railroad Bridge closes for any reason, the remote operator will monitor waterway traffic in the area with closed circuit cameras and infrared sensors mounted on the bridge. The bridge would only be closed if the off-site remote operator's visual inspection shows that the channel is clear and there are no vessels transiting in the area.

While the NS Railroad Bridge is moving from the full open to the full closed position, the controller will maintain constant surveillance of the navigation channel to ensure that no conflict with maritime traffic exists. In the event of failure or obstruction of monitoring equipment, the controller will stop and return the bridge to the full open position to vessels. In these situations, a bridge tender must be called and on-site within 30 minutes to operate the bridge.

Before closing the draw, the channel traffic lights would change from flashing green to flashing red, the horn will sound five short blasts, and an audio voice warning stating, ''Norfolk Southern's Railroad Bridge over Christina River at milepost 1.4 will be closing to river traffic.'' Five short blasts of the horn will continue until the bridge is seated and locked down to vessels, the channel traffic lights will continue to flash red.

When the rail traffic has cleared, the horn will automatically sound one prolonged blast followed by one short blast to indicate that the draw of the Norfolk Southern Railroad Bridge is about to return to its full open position to vessels. During the open swing movement, the channel traffic lights would flash red until the bridge is in the full open position. In the full open position to vessels, the bridge channel lights will flash green followed by an announcement stating, ''Security, security, security, the Norfolk Southern Railroad Bridge at mile 1.4 is open for river traffic.'' Operational information will be provided 24 hours a day on marine channel 13 and via telephone (717) 541–2140.

The Coast Guard proposes to amend 33 CFR 117.237 by redesignating paragraphs (b) through (d) as paragraphs (c) through (e) and add a new paragraph (b).

The proposal will also change the name of the bridges in redesignated paragraph (2)(d) from ''Conrail Bridges'' to ''Norfolk Southern Railroad Bridges''. The name changes will accurately reflect the names of these bridges. Text modifications to be consistent with other proposed changes will be made in these paragraphs, as appropriate.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Although the NS Railroad Bridge will be untended and operated from a remote location, mariners can continue their transits because the bridge will remain open to mariners, only to be closed for train crossings or periodic maintenance.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reason. The rule allows the NS Railroad Bridge to operate remotely and requires the bridge to remain in the open position to vessels the majority of the time, only closing for train crossings or periodic maintenance.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.237 redesignate paragraphs (b) through (d) as paragraphs (c) through (e) and add a new paragraph (b), and revise newly redesignated paragraph (d) to read as follows:

§ 117.237 Christina River.

* * * * *

(b) The draw of the Norfolk Southern Railroad Bridge, mile 1.4 at Wilmington, shall operate as follows:

(1) The draw shall remain in the open position for navigation. The draw shall only be closed for train crossings or periodic maintenance authorized in accordance with Subpart A of this part.

(2) The bridge shall be operated by the controller at the Harrisburg, PA Dispatcher's Office. The controller shall monitor vessel traffic with closed circuit cameras and infrared sensors covering the swing radius. Operational

information will be provided 24 hours a day on marine channel 13 and via telephone (717) 541–2140.

(3) The bridge shall not be operated from the remote location in the following events: Failure or obstruction of the infrared sensors, closed-circuit cameras or marine-radio communications, or when controller visibility is less than ¾ of a mile. In these situations, a bridge tender must be called to operate the bridge on-site.

(4) Before the bridge closes for any reason, the remote operator will monitor waterway traffic in the area. The bridge shall only be closed if the off-site remote operator's visual inspection shows that the channel is clear and there are no vessels transiting in the area. While the bridge is moving, the operator shall maintain constant surveillance of the navigation channel.

(5) Before closing the draw, the channel traffic lights would change from flashing green to flashing red, the horn will sound five short blasts, and an audio voice warning stating, ''Norfolk Southern's Railroad Bridge over Christina River at milepost 1.4 will be closing to river traffic.'' Five short blasts of the horn will continue until the bridge is seated and locked down to vessels, the channel traffic lights will continue to flash red.

(6) When the rail traffic has cleared, the horn will automatically sound one prolonged blast followed by one short blast to indicate the draw is opening to vessel traffic. During the opening swing movement, the channel traffic lights would flash red until the bridge returns to the fully open position. In the full open position to vessels, the bridge channel lights will flash green followed by an announcement stating, ''Security, security, security, the Norfolk Southern Railroad Bridge at mile 1.4 is open for river traffic.''

(c) * * *

(d) The draws of the Norfolk Southern Railroad bridges, at miles 4.1 and 4.2, both at Wilmington, shall open on signal from 6 a.m. to 8 p.m. if at least 24 hours notice is given. From 8 p.m. to 6 a.m., the draws need not be opened for the passage of vessels.

* * * * *

Dated: September 28, 2004.

Ben R. Thomason III,

Captain, United States Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 04–22850 Filed 10–8–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–04–040]

RIN 1625–AA87

Security Zones; Protection of Military Cargo, Captain of the Port Zone Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a security zone in Budd Inlet, Olympia, WA to protect Department of Defense assets and military cargo in Puget Sound, Washington. The proposed security zone, when enforced by the Captain of the Port Puget Sound, would provide for the regulation of vessel traffic in the vicinity of military cargo loading operations in the navigable waters of the United States.

DATES: Comments and related material must reach the Coast Guard on or before November 26, 2004.

ADDRESSES: You may mail comments and related material to Commanding Officer, Marine Safety Office Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134. Marine Safety Office Puget Sound maintains the public docket [CGD13–04–040] for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Puget Sound between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTjg T. Thayer, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217–6232. For specific information concerning enforcement of this rule, call Marine Safety Office Puget Sound at (206) 217–6200 or (800) 688–6664.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13–04–040), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Puget Sound at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Hostile entities continue to operate with the intent to harm U.S. National Security by attacking or sabotaging national security assets. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks. 67 FR 58317 ((Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks)); 67 FR 59447 ((Sept. 20, 2002) continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)); 68 FR 55189 ((Sept. 22, 2003 (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)).

The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations).

Moreover, the ongoing hostilities in Afghanistan and Iraq make it prudent for U.S. ports and waterways to be on a higher state of alert because the Al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The Coast Guard, through this proposed rule, intends to assist the Department of Defense protect vital national security assets, in waters of Puget Sound. This proposed rule would add Budd Inlet as a permanent security zone in 33 CFR 165.1321. The security zones permanently established in 33 CFR 165.1321 exclude persons and vessels from these zones during military

cargo loading and unloading operations and set forth the procedures for obtaining permission to enter, move within or exit these security zones. Likewise, entry into zone described in this proposed rule will be prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other Federal, State, or local agencies.

Discussion of Proposed Rule

On May 14, 2004 we published a notice of proposed rule making (69 FR 26783) and on August 27, 2004, we published a final rule entitled ''Security Zone; Protection of Military Cargo, Captain of the Port Zone Puget Sound, WA'', in the **Federal Register** (69 FR 52600), which established security zones to protect military cargo loading operations in the Blair and Sitcum Waterways, Commencement Bay, WA. Since May 21, 2004, the Captain of the Port Puget Sound has issued three temporary final rules establishing security zones in Budd Inlet, West Bay, Olympia, Washington (CGD13–04–035 signed August 12, 2004; CGD13–04–027 signed June 4, 2004; and CGD13–04–026 signed May 21, 2004). Unfortunately, the May 2004 notice of proposed rule making for 33 CFR 165.1321 was published before the Coast Guard was notified that Budd Inlet would be used for military cargo loading operations.

Like the final rule we established for the Blair and Sitcum Waterways, the temporary final rules established in Budd Inlet were established to protect facilities used by vessels to load and/or unload military cargo. Other than the location, the restrictions and requirements contained in these temporary final rules were virtually identical to the requirements established in 33 CFR 165.1321 for the Blair and Sitcum Waterways. Hence, this proposed rule would amend 33 CFR 165.1321 by adding Budd Inlet, Olympia, WA to the areas where permanent security zones are established for military cargo loading operations. However, the Captain of the Port will only enforce the security zones established in 33 CFR 165.1321, including the zone proposed for Budd Inlet, after issuing a notice of enforcement. Upon notice of suspension of enforcement, all persons and vessels are authorized to enter, move within and exit this security zone. This proposed rule is deemed necessary to protect vital national security assets and military cargo.

The Coast Guard proposes establishing a security zone in the Budd Inlet Security Zone which controls all vessel movement in a limited portion of Budd Inlet, West Bay, WA which includes all waters enclosed by the following points: 47°03′12″ N, 122°25′21″ W, which is approximately the northwestern end of the fence line enclosing Berth 1 at Port of Olympia; then northerly to 47°03′15″ N, 122°54′21″ W, which is the approximate 300 feet north along the shoreline; then westerly to 47°03′15″ N, 122°54′26″ W; then southerly to 47°03′06″ N, 122°54′26″ W; then southeasterly to 47°03′03″ N, 122°54′20″ W, which is approximately the end of the T-shaped pier; then north to 47°03′01″ N, 122°54′21″ W, which is approximately the southwestern corner of berth 1; then northerly along the shoreline to the point of origin. [Datum: NAD 1983.]

This proposed rule would be enforced from time to time by the Captain of the Port Puget Sound for such times before, during, and after military cargo loading and unloading as he or she deems necessary to prevent damage or injury to any vessel or waterfront facility, to safeguard ports, harbors, territories, or waters of the United States or to secure the observance of the rights and obligations of the United States. The Captain of the Port Puget Sound will cause notice of enforcement or suspension of enforcement of this security zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including Marine Safety Office Puget Sound's Internet Web page located at *http://www.uscg.mil/d13/units/msopuget*. In addition, Marine Safety Office Puget Sound maintains a telephone line that is manned 24-hours-a-day, 7-days-a-week. The public can contact Marine Safety Office Puget Sound at (206) 217–6002 or (800) 688–6664 to obtain information concerning enforcement of this rule.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this proposed rule would restrict access to the regulated area, the effect of this proposed rule would not be significant. This expectation is based on the fact that the regulated area established by the rule would encompass a limited area in Budd Inlet, Olympia, WA. In addition, temporary final rules established for past cargo loading and unloading operations have only lasted from a few days to over a week in duration. Hence, the Coast Guard expects that enforcement periods under this proposed rule will be of similar duration. Further, Coast Guard forces will actively monitor and enforce the Budd Inlet security zone and are authorized by the Captain of the Port to grant authorization to vessels to enter this waterway. In addition, in certain circumstances VTS may grant authorization to enter, move within or depart this waterway. In other words, those vessels or persons who may be impacted by this rule may request permission to enter, move within or depart this security zone. Finally, the Coast Guard will cause a notice of suspension of enforcement to be published when cargo loading or unloading operations have concluded. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate near or anchor in the vicinity of Budd Inlet.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The security zone is limited in size; (ii) designated representatives of the Captain of the Port may authorize access to the security zone; (iii) security zone for any given operation will effect the given geographical location for a limited time; (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly and (v) the Coast Guard will cause a notice of suspension of

enforcement to be published when cargo loading or unloading operations have concluded.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact one of the points of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. We have determined that these security zones and fishing rights protection need not be incompatible. We have also determined that this Proposed Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian tribes that have questions concerning the provisions of this proposed rule or options for compliance are encourage to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard's preliminary review indicates this proposed rule is categorically excluded from further environmental documentation under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D. The environmental analysis and Categorical Exclusion Determination will be prepared and be available in the docket for inspection and copying where indicated under **ADDRESSES.** All standard environmental measures remain in effect.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. In § 165.1321, add paragraph(c)(3) to read as follows:

§ 165.1321 Security Zone; Protection of Military Cargo, Captain of the Port Zone Puget Sound, WA.

* * * * *

(c) * * *

(3) *Budd Inlet Security Zone:* The Security Zone in Budd Inlet, West Bay, Olympia, WA, includes all waters enclosed by a line connecting the following points: 47°03′12″ N, 122°25′21″ W, which is approximately the northwestern end of the fence line enclosing Berth 1 at Port of Olympia;

then northerly to 47°03′15″ N, 122°54′21″ W, which is the approximate 300 feet north along the shoreline; then westerly to 47°03′15″ N, 122°54′26″ W; then southerly to 47°03′06″ N, 122°54′26″ W; then southeasterly to 47°03′03″ N, 122°54′20″ W, which is approximately the end of the T-shaped pier; then north to 47°03′01″ N, 122°54′21″ W, which is approximately the southwestern corner of berth 1; then northerly along the shoreline to the point of origin. [Datum: NAD 1983.]

* * * * *

Dated: September 22, 2004.

Danny Ellis,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 04–22744 Filed 10–8–04; 8:45 am]

BILLING CODE 4910–15–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Chapter XXV

Notice Inviting Preliminary Informal Public Input in Advance of Learn and Serve America Program Changes

AGENCY: Corporation for National and Community Service.

ACTION: Request for comments and notice of meetings.

SUMMARY: The Corporation for National and Community Service (the Corporation) invites the public to share its views during two scheduled conference calls and two scheduled public meetings on issues related to Learn and Serve America. In response to Executive Order 13331, the Corporation's Board of Directors Grants Management Task Force Report, and in preparation for the expected round of new funding in 2006, Learn and Serve America is considering combining grant guidelines, provisions, and regulations into a single, streamlined document. We are interested in public views about the future of Learn and Serve America programs and the ways in which those programs have an impact on students, communities, and the institutions that operate programs. Some issues under consideration include: Learn and Serve America grant selection criteria, intensity and duration of a participant's community service, the role of Learn and Serve America grantees within Unified State Plans, timing and substance of Learn and Serve America grant applications, and definitions of key terms. The Corporation is also interested in receiving input on allowable subgrant types, project expenditures, performance indicators and evaluation requirements, grantee reporting, intergenerational participation, and program sustainability and institutionalization.

DATES: Please submit written input to the Corporation as soon as possible. We will consider input as we begin consideration of possible revisions to the Learn and Serve America guidelines, provisions and regulations and during the drafting of a Notice of Proposed Rulemaking. In addition, the Corporation will hold two toll-free conference calls and two public input meetings. See **SUPPLEMENTARY INFORMATION** for conference call and input meeting information.

ADDRESSES: You may submit written input to the Corporation by any of the following methods:

(1) Electronically through the Corporation's e-mail address system to *LSADirections@cns.gov.*

(2) By fax to (202) 565–2787, Attention Amy Cohen, Director, Learn and Serve America.

(3) By mail sent to: Corporation for National and Community Service, Attn: Amy Cohen, Director, Learn and Serve America, 1201 New York Avenue NW., Room 9609, Washington, DC 20525.

(4) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (3) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

Due to continued delays in the Corporation's receipt of mail, we strongly encourage responses via e-mail or fax.

FOR FURTHER INFORMATION CONTACT: For further information about the substance of this notice or to request this notice in an alternative format for the visually impaired, contact Amy Cohen at (202) 606–5000, ext. 484; *acohen@cns.gov.* For further information about the conference calls, please refer to our National Service-Learning Clearinghouse Web site at *http://www.servicelearning.org* or call Pat Carpenter at (202) 606–5000, ext. 209; *pcarpenter@cns.gov.* The TDD/TTY number is (800) 833–3722.

SUPPLEMENTARY INFORMATION: For more information on the Corporation, please visit our Web site at *http://www.nationalservice.org.* When providing oral or written input on the issues outlined above, please especially consider the following questions:

Leveraging Corporation assistance: How can we ensure that as many educational institutions as possible realize the benefits of community service-learning through the programs and services of the Corporation, and in general improve the cost effectiveness and efficiency of Corporation grants and technical assistance? Should we grant competitive preferences to organizations that have never before received Learn and Serve America funds? How should these questions apply to grantees that operate local programs directly and to grantees that provide subgrants to others to operate local programs?

Sustainability and institutionalization: How can the Corporation ensure that appropriate steps are being taken to build service-learning into the fabric of the educational or community organization? How can we ensure that Learn and Serve America grantee and subgrantee programs can continue to be successful without Federal support? What are appropriate components of grantee ''sustainability plans?'' How should these questions apply to grantees that operate local programs directly; to grantees that provide subgrants to others to operate local programs?

Focusing on community needs: How can the Corporation ensure that Federal funds are used most effectively to meet community needs and that all Learn and Serve America participants make a positive impact on community problems and needs?

Duration and Intensity of service: What policies should be adopted concerning the intensity (*i.e.*, service hours per time period) and duration of community service expected of Learn and Serve America participants?

Selection Criteria: What criteria should the Corporation use in selecting grantees in its competitive Learn and Serve America programs? Should Learn and Serve America have two sets of grant application and selection criteria: one for consortia and grant intermediaries (State Education Agencies, Grant Making Entities, and Higher Education Consortia), and one for local programs? If so, what should such separate criteria include?

Subgrants: What policies should govern sub-granting? Should there be limits on duration or on type of subgrant? How many levels of subgranting should be allowed?

Grant application and process: For how many months before commencing or continuing a project does a grantee need to know that its application is approved? For how many months before commencing or continuing a project does a grantee need to know that its grant is awarded? What is a reasonable amount of time needed to prepare an application? In general, how can the Corporation simplify and streamline its grant application documents and processes? In particular, can we

simplify the application and process for the second and third year grant continuations?

Definitions: How should we define ''community needs?'' How should we define a Learn and Serve America ''participant'' for elementary/secondary education and for higher education programs? How should we define a ''service hour?'' How should we clarify the definition of ''youth and adult volunteers'' who provide service along with Learn and Serve America program participants? How should we define a ''subgrantee?'' Should Grant Making Entities (grantees that must serve multiple states in order to be eligible for funding) be defined as providing service in two or more states from the beginning of the grant, or prospectively at any point during the grant period? Should this definition be the same for School-based and Community-based grantee organizations?

Teacher Education Grants: Should we require that Learn and Serve America grantee teacher education programs prepare prospective teachers to use service-learning in their classroom/teaching practices?

Intergenerational Activities: How should the Corporation promote the use of service-learning practices and models that utilize multiple generations? For example, should we require that Learn and Serve America higher education programs serving children include a component in which children serve with higher education student participants?

Adult and Youth Volunteers: How should the Corporation promote the recruitment of adult and youth volunteers who work with Learn and Serve America participant students in meeting community needs? How should we encourage the participation of adult volunteers who have particular expertise in meeting the community needs focused on by the Learn and Serve America projects? How should we encourage the participation of elementary/secondary student participants' family members?

Community Organization Partnerships: What steps should the Corporation take to strengthen the role of community organizations as partners in Learn and Serve America projects? What steps should we take to promote greater participation of faith-based and small community organizations?

Project Expenditures: Should Learn and Serve America grantees be required to include evaluation funding in their project budgets, along with stipulation of the scope and method of evaluations? Should we require that web conferencing capabilities be included in the grant budget?

Performance measures and evaluation: How can the Corporation and its Learn and Serve America grantees ensure that all Learn and Serve America programs are setting and achieving appropriate, measurable performance outcome goals? Should we require that Learn and Serve America grantees and subgrantees establish and meet a common set of outcome measures? How can the Corporation ensure that its grantees regularly and effectively evaluate their service-learning programs?

Unified State Plans: What role, if any, should Learn and Serve America grantees and subgrantees play within the Corporation's Unified State Plans? How should Learn and Serve America grantees and subgrantees be encouraged to participate in Unified State Plans and state-wide service conferences?

Conference Calls and Public Input Meetings

The Corporation is planning two conference calls and two public input meetings in October. Please check our National Service-Learning Clearinghouse Web site at *http://www.servicelearning.org* for further information regarding these conference calls and public input meetings or contact Pat Carpenter at (202) 606–5000, ext. 209 *(pcarpenter@cns.gov).*

Conference Calls

October 14—10:30 a.m.

October 15—3:30 p.m.

To register for the calls, please contact Pat Carpenter at *pcarpenter@cns.gov.* The time for both calls is eastern time.

Public Input Meetings

October 13 from 2–4 p.m. Rabb Room, University College of Citizenship and Public Service, Tufts University, Medford, MA.

October 14 from noon–2 p.m. One Dupont Circle, Conference Room C, Level 1B, Washington, DC.

The time for both meetings is eastern time. We strongly encourage you to attend in person if you are in the Boston and DC areas, and ask that you RSVP to Pat Carpenter at *pcarpenter@cns.gov.*

Dated: October 7, 2004.

Frank R. Trinity,

General Counsel.

[FR Doc. 04–22951 Filed 10–8–04; 8:45 am]

BILLING CODE 6050–$$–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3055; MB Docket No. 04–380; RM–11069]

Radio Broadcasting Services; Corydon and Lanesville, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Blue Chip Broadcasting Licenses II, Ltd., licensee of Station WGZB–FM, Corydon, Indiana proposing the reallotment of Channel 243A from Corydon, Indiana to Lanesville, Indiana, as the community's first local transmission service, and the modification of the license for Station WGZB–FM to reflect the changes. The coordinates for Channel 243A at Lanesville are 38–12–52 NL and 86–01–00 WL, the same as those currently used by WGZB–FM at Corydon.

DATES: Comments must be filed on or before November 18, 2004, and reply comments on or before December 3, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: Evan S. Henschel, Esq., Wiley Rein & Fielding LLP, 1776 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 04–380, adopted September 23, 2004, and released September 27, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR § 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by removing Channel 243A at Corydon and by adding Lanesville, Channel 243A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–22879 Filed 10–8–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3010; MB Docket No. 04–367; RM–11070]

Radio Broadcasting Services; Genoa, CO; Security, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Optima Communications, Inc. requesting the substitution of Channel 288C2 for Channel 288C3 at Security, Colorado and the modification of Station KSKX(FM)'s license accordingly. The coordinates for Channel 288C2 at Security are 38–37–30 NL and 104–49–00 WL. There is a site restriction 16.12 kilometers (10 miles) southwest of the community. To accommodate the proposal, petitioner requests the substitution of Channel 291C3 for vacant Channel 288C3 at Genoa, Colorado. The coordinates for Channel 291C3 at Genoa are 39–15–35 NL and 103–17–15 WL with a site restriction 18.4 kilometers (11.4 miles) east of the community.

DATES: Comments must be filed on or before November 15, 2004, and reply comments on or before November 30, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Optima Communications, Inc., c/o Mark N. Lipp, Esq., Vinson & Elkins, L.L.P., The Willard Office Building, 1455 Pennsylvania Avenue, NW., Washington, DC 20004–1008.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 367, adopted September 22, 2004, and released September 24, 2004. The full text of this Commission notice is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 288C3 and by adding Channel 291C3 at Genoa; by removing Channel 288C3 and by adding Channel 288C2 at Security.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–22880 Filed 10–8–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist the Ute Ladies'-Tresses Orchid and Initiation of a 5-Year Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the Ute ladies'-tresses orchid (*Spiranthes diluvialis*) from the Federal List of Endangered and Threatened Wildlife and Plants pursuant to the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial information and are initiating a status review to determine if delisting this species is warranted. We are requesting submission of any new information (best scientific and commercial data) on the Ute ladies'-tresses orchid since its original listing as a threatened species in 1992.

Following this status review, we will issue a 12-month finding on the petition to delist. Because a status review is also required for the 5-year review of listed species under section 4(c)(2)(A) of the Act, we are electing to prepare these reviews simultaneously. At the conclusion of these simultaneous reviews, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act, and make the requisite finding under section 4(c)(2)(B) of the Act based on the results of the 5-year review.

DATES: The 90-day finding announced in this document was made on October 12, 2004. To be considered in the 12-month finding on this petition or the 5-year review, comments and information should be submitted to us by December 13, 2004.

ADDRESSES: Comments, material, information, or questions concerning this petition and finding should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119. The separate petition finding, supporting data, and comments are available for public review, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Henry Maddux, Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, Utah Field Office, at the above address or by telephone at 801–975–3330.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on all information available to us at the time we make the finding. To the maximum extent practicable, we must make this finding within 90 days of receiving the petition and publish a notice of the finding promptly in the **Federal Register**. Our standard for substantial information with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). When a substantial finding is made, we are required to promptly begin a review of the status of the species, if one has not already been initiated.

When considering an action for listing, delisting, or reclassifying a species, we are required to determine whether a species is endangered or threatened based on one or more of the five listing factors as described at 50 CFR 424.11. These factors are given as—(A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting the continued existence of the species. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons—(1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error.

In 1992, we listed Ute ladies'-tresses orchid (*Spiranthes diluvialis*) as threatened (57 FR 2053). We made this determination based upon the best scientific and commercial information available at the time. As stated and documented in the final listing rule, this action was taken, in part, because of —(1) The threats of habitat loss and modification and (2) the orchid's small population and low reproductive rate make it vulnerable to other threats. We did not designate critical habitat for Ute ladies'-tresses orchid because such action was not considered prudent at the time. On May 10, 1996, we received a petition from the Central Utah Water Conservancy District to delist Ute ladies'-tresses orchid pursuant to the Act. A ''Special Status Species Update'' for Ute ladies'-tresses orchid, dated April 1996, accompanied the petition as supporting information.

In response to the petitioner's request to delist Ute ladies'-tresses orchid, we sent a letter to the petitioner on June 10, 1996, explaining our inability to act upon the petitions due to the low priorities assigned to delisting petitions in our 1996 Listing Priority Guidance (61 FR 24722, May 16, 1996). Prior to 1999, the Service listing budget (including delistings, reclassifications, and designations of critical habitat) was underfunded, which meant that lower tier priority actions went unaddressed. Beginning in 1999, work on delisting (including delisting petition findings) was included in the line item for the recovery program instead of the listing program (64 FR 27596, May 20, 1999). Since 1999, higher priority work has further precluded our ability to act upon this petition.

In making this finding we rely on information provided by the petitioners and evaluate that information in accordance with 50 CFR 424.14(b). The contents of this finding summarize that information included in the petition and which was available to us at the time of the petition review. Our review for the purposes of a so-called ''90-day'' finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold. We do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, as the Act and regulations contemplate, at the 90-day finding, we accept the petitioner's sources and characterizations of the information unless we have specific information to the contrary. Thus, in this finding, we express no view as to the ultimate issue of whether the species should be delisted. We can come to a conclusion on that issue only after a more thorough review of the species' status. In that review, which will take approximately 9 more months, we will perform a rigorous critical analysis of the best available scientific information, not just the information in the petition. We will ensure that the data used to make our determination as to the status of the species is consistent with the Act and the Information Quality Act (Pub. L. 106–554). We ask the public to submit to us any pertinent information concerning the status of or threats to this species.

Discussion

The petition states that there is substantial new information indicating that the population size and distribution are much larger than known at the time of listing; there is more information on life history and habitat needs, allowing better management; and threats are not as great in magnitude or imminence as understood at the time of listing. The petition was accompanied by a ''Special Species Status Update.'' The Status Update compiled, synthesized, and described information from Service files that had been acquired about Ute ladies'-tresses orchid since it was listed. Information included taxonomy and genetics, reproductive biology and life history, pollination, and population size and distribution. The five listing factors (as defined in section 4(a)(1) of the Act) were then addressed using this new information.

Since the date of the petition to delist, additional information has been acquired and provided to the Service. In 1995, the total estimated population size was 20,500 individuals. With discoveries since 1995, population estimates have increased. The total population size of Ute ladies'-tresses orchid is currently estimated to be 60,000 individuals.

New occurrences have been documented in Nebraska, Wyoming, Washington, Idaho, Utah, and Colorado, substantially increasing the known range and estimated population size. Monitoring of species numbers, certain demographic parameters, and habitat

characteristics has improved our understanding of population fluctuations, habitat preferences, and threats to habitat conditions. Research has continued on pollination biology, genetics, and root-associated fungi. Research and monitoring have been conducted on the relationship of stream flows, ground water levels, and stream channel form to surfaces on which the orchid occurs. All new information will be considered and fully analyzed as part of the species status review.

Finding

We have reviewed the petition and its supporting documentation. We have found that the petition presents substantial information indicating that delisting Ute ladies'-tresses orchid may be warranted. As the petition to delist asserts, new information acquired since the orchid was listed indicates that population size is greater than originally known. While significant questions remain about the actual size of populations, requirements for seedling establishment and recruitment, and severity of impacts due to habitat modifications such as water development projects, we consider these to be issues relevant to the listing determination and warranting further investigation. Accordingly, we believe it is appropriate to consider this information and any other new information available about this species and the threats it may face in a status review. A status review is a component of both the 12-month finding and the five-year review; therefore, we will be conducting these reviews simultaneously.

Five-Year Review

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B) and the provisions of subsection (a) and (b), to determine, on the basis of such a review, whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened, or from threatened to endangered. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the Ute ladies'-tresses orchid.

Public Information Solicited

We are requesting information for both the 12-month finding and the 5-year review, as we are conducting these reviews simultaneously.

When we make a finding that substantial information exists to indicate that listing or delisting a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on Ute ladies'-tresses orchid. This includes information on taxonomy and genetics, reproductive biology and life history, pollination, population size, distribution, habitat management, and the five listing factors (including type and imminence of threats). We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry or environmental entities, or any other interested parties concerning the status of Ute ladies'-tresses orchid.

The 5-year review considers all new information available at the time of the review. This review will consider the best scientific and commercial data that has become available since the current listing determination or most recent status review. Categories of requested information include (A) species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics; (B) habitat conditions, including but not limited to amount, distribution, and suitability; (C) conservation measures that have been implemented that benefit the species; (D) threat status and trends; and (E) other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

If you wish to comment for either the 12-month finding or the 5-year review, you may submit your comments and materials concerning this finding to the Field Supervisor, U.S. Fish and Wildlife Service, Utah Field Office (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

References Cited

A complete list of all references cited in this finding is available, upon request, from the U.S. Fish and Wildlife Service, Utah Field Office (see **ADDRESSES** section).

Authority: The authority for this action is section 4 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: September 29, 2004.

Paul Henne,

Acting Director, Fish and Wildlife Service.

[FR Doc. 04–22735 Filed 10–8–04; 8:45 am]

BILLING CODE 4310–55–U

Notices

Federal Register

Vol. 69, No. 196

Tuesday, October 12, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Madison—Beaverhead Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Beaverhead-Deerlodge National Forest's Madison-Beaverhead Resource Advisory Committee will meet on Tuesday, November 9, 2004, from 10a,m. until 4 p.m. in Ennis, Montana, for a business meeting. The meeting is open to the public.

DATES: Tuesday, November 9, 2004.

ADDRESSES: The meeting will be held at the Forest Service office at 5 Forest Service Road, Ennis, MT 59729.

FOR FURTHER INFORMATION CONTACT: Thomas K. Reilly, Designated Forest Official (DFO), Forest Supervisor, Beaverhead-Deerlodge National Forest, at (406) 683–3973.

SUPPLEMENTARY INFORMATION: Agenda topics for these meetings include hearing and deciding on proposals for projects to fund under Title II of Pub. L. 106–393, hearing public comments, and other business. If the meeting locations change, notice will be posted in local newspapers, including the Dillon Tribune and The Montana Standard.

Dated: October 4, 2004.

Thomas K. Reilly,

Forest Supervisor.

[FR Doc. 04–22818 Filed 10–8–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Integrated Resource Contracts FS–2400–13 and FS–2400–13T

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Forest Service published, on October 5, 2004 (69 FR 59577), a notice implementing interim Integrated Resource Contracts, FS–2400–13, for use when timber products are measured after harvest, and FS–2400–13T, for use when timber products are measured before harvest. The statement that the interim contracts became effective immediately upon publication of the notice in the **Federal Register** was inadvertently omitted.

FOR FURTHER INFORMATION CONTACT: Richard Fitzgerald, Forest Management Staff, (202) 205–1753, or Lathrop Smith, Forest Management Staff, (202) 205–0858.

Correction: In the **Federal Register** issue of October 5, 2004, in FR 04–22338, page 59577, in the first column, the **DATES** section is corrected to read as follows:

DATES: *Effective Date:* The interim Integrated Resource Contracts FS–2400–13 and FS–2400–13T are effective on October 5, 2004.

Comment Date: Comments must be received in writing on or before November 4, 2004.

ADDRESSES: Send written comments by mail to USDA Forest Service, Director Forest Management, 1400 Independence Avenue, SW., Mail Stop 1103, Washington, DC 20250–0003; via e-mail to: *integratedresourcecontracts@fs.fed.us;* or via facsimile to (202) 205–1045. Comments may also be submitted via the World Wide Web Internet Web site at: *http://www.regulations.gov.* All comments including names and addresses when provided are placed in the record and are available for public inspection and copying. The interim Integrated Resource Contracts are available for public review on the Forest Service World Wide Web/Internet site at: *http://www.fs.fed.us/forestmanagement/projects/stewardship/contracts.* Alternatively, these can be viewed in the office of the Director of Forest Management, Third Floor, Northwest Wing, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205–0893 to facilitate entry into the building.

Dated: October 5, 2004.

Frederick Norbury,

Associate Deputy Chief, National Forest System.

[FR Doc. 04–22869 Filed 10–8–04; 8:45 am]

BILLING CODE 3410–11–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Courthouse Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of appointment of advisory committee members and date of first meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has decided to establish an advisory committee to advise the Board on issues related to the accessibility of courthouses covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. The Courthouse Access Advisory Committee (Committee) includes organizations which represent the interests affected by the accessibility guidelines for courthouses. This notice also announces the date, times and location of the first Committee meeting, which will be open to the public.

DATES: The first meeting of the Committee is scheduled for November 4, 2004, beginning at 9 a.m. and ending at 6 p.m.; and November 5, 2004 beginning at 9 a.m. and ending at 12 p.m.

ADDRESSES: The meeting will be held at the Ronald Reagan Building, Hemisphere A, 1300 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Elizabeth Stewart, Office of General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–0042 (Voice); (202) 272–0082 (TTY). E-mail *stewart@access-board.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–0080, by pressing 2 on the telephone keypad, then pressing 1, and requesting publication S–51 (Courthouse Access Advisory Committee notice). Persons using a TTY should call (202) 272–0082. Please record a name, address, telephone number and request publication S–51. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or computer disk). This document is also available on the Board's Internet site *(http://www.access-board.gov/caac.htm)*.

Courthouse Access Advisory Committee

In February of this year, the Access Board announced that it will undertake outreach activities that highlight accessibility within a particular sphere or focus area. Outreach efforts will aim to increase awareness of a particular aspect of accessibility through partnerships with interested stakeholders and the development and distribution of information and guidance materials. The goal of this program is to increase the visibility of different facets of accessibility in a manner that supplements the Board's technical assistance and training programs, builds partnerships with other entities, improves compliance with access requirements, and showcases best practices for accessible design. In choosing access to courthouses as its first focus topic, the Board gave priority to an area that has been problematic or not well understood and where supplementary guidance is needed. Access to courts was highlighted in May when the U.S. Supreme Court ruled that individuals may sue states under Title II of the Americans with Disabilities Act for failing to provide access to courts.[1]

As part of the outreach efforts on courthouse accessibility, the Access Board is establishing a Federal advisory committee to advise the Access Board on issues related to the accessibility of courthouses, particularly courtrooms, including best practices, design solutions, promotion of accessible features, educational opportunities, and the gathering of information on existing barriers, practices, recommendations, and guidelines.

[1]Tennessee vs. Lane, 158 L.Ed. 820 (2004)

On June 25, 2004, the Access Board published a notice of intent to establish an advisory committee to advise the Board on issues related to the accessibility of courthouses covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. (69 FR 35578) The notice identified the interests that are likely to be significantly affected by issues relating to courthouse accessibility: courthouse designers; judges and court administrators; Federal, State and local government agencies; standards-setting organizations; organizations representing the access needs of individuals with disabilities; and other persons affected by courthouse accessibility.

Over 60 nominations were submitted. Over one third of the applications were from individuals or organizations representing persons with disabilities. Another third of the applications were from State and local governments; six applications were from Federal entities; several applications were from major code groups and the remainder were from architects, lift manufacturers and distributors, or others with an interest in courthouse accessibility. For the reasons stated in the notice of intent, the Access Board has determined that establishing the Courthouse Access Advisory Committee is necessary and in the public interest. The Access Board has appointed 31 members to the Committee from the following organizations:

Accessibility Equipment Manufacturers Association,
Administrative Office of the U.S. Courts,
American Institute of Architects,
Board of Governors, American Bar Association,
California Administrative Office of the Courts,
Committee on Persons with Disabilities in the Legal Profession, Arizona State Bar Association,
Conference of State Court Administrators,
Cook Co. Government Office of Capital Planning and Policy,
David Calvert, PA,
Disabilities Law Project,
General Services Administration,
HDR Architecture, Inc.,
Hellmuth, Obata and Kassabaum, Inc.,
International Code Council,
Michael Graves & Associates,
Montana Advocacy Program,
National Association for Court Management,
National Center for State Courts,
National Fire Protection Association,
New Hampshire Governor's Commission on Disability,
Ninth Circuit for the U.S. Courts,
Paralyzed Veterans of America,
Phillips Swager Associates,
Securities and Facilities Committee,
United States Judicial Conference,
Self Help for Hard of Hearing,
T.L. Shield & Associates,
Tenth Judicial Circuit Court of Florida,
U.S. Department of Justice,
United Spinal Association,
Vertical Mobility Division, and
Western Law Center for Disability Rights.

The Access Board regrets being unable to accommodate all requests for membership on the Committee. In order to keep the Committee to a size that can be effective, it was necessary to limit membership. It is also desirable to have balance among members of the Committee representing different interests, such as disability organizations and court administration. The membership of this Committee represents each of these vested interests.

Committee meetings will be open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee. Historically, advisory committees establish subcommittees to address specific issues. Members of groups or individuals who are not members of the Committee may have an opportunity to participate on these subcommittees. The Access Board believes that participation of this kind can be very valuable for the advisory committee process.

The meeting will be held at a site accessible to individuals with disabilities. Real-time captioning will be provided. Individuals who require sign language interpreters should contact Elizabeth Stewart by October 22, 2004. Decisions with respect to future meetings will be made at the first meeting. Notices of future meetings will be published the **Federal Register**.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 04–22856 Filed 10–8–04; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 040907254–4254–01]

Current Industrial Reports—MQ315A, Apparel

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of the Census (Census Bureau) proposes to expand its Current Industrial Reports survey, MQ315A, Apparel, to include the production of socks. The survey currently provides estimates for a number of types of garments but does not include socks. Because of interest among some policymakers to measure the economic impact of imported socks on domestic producers, the Census Bureau anticipates appropriated funds being made available in its Fiscal Year 2005 budget for the collection of data on socks. If funds are made available, we will add socks to the survey for the 2004 reference year and manufacturers of socks will be asked to provide data on the quantity and value of socks they shipped, by fiber type and size category. If funds are not made available, we will not expand the survey to include producers of socks but will conduct the survey with its current definitions and coverage. We expect the survey mailing to occur at the end of December 2004.

DATES: Written comments on this notice must be submitted on or before November 12, 2004.

ADDRESSES: Direct all written comments to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Judy M. Dodds, Assistant Division Chief, Census and Related Programs, Manufacturing and Construction Division, on (301) 763–4587 or by e-mail at *judy.m.dodds@census.gov.*

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, United States Code (U.S.C.), Section 182. Data collected in the MQ315A survey is within the general scope, type, and character of inquiries covered in the Economic Census authorized by Title 13, U.S.C., Section 131. The Census Bureau is also authorized to collect and publish quarterly statistics relating to domestic apparel and textile industries (Title 13, U.S.C., Section 81). The MQ315A is conducted quarterly but has an annual mailing which normally collects information from small producers. For survey 2004 we would include all producers of socks in this annual supplement to the quarterly survey.

Published estimates from the MQ315A, Apparel, are used by a variety of private business and trade associations. They are a major source of information about industries that may be impacted by foreign trade. At the present time, manufacturers of socks are not included in the MQ315A survey. This one-time expansion of MQ315A to include socks will result in quantity and value data for policymakers studying the industry.

Taking into consideration any comments we receive, we will make the decision whether or not to expand the survey for 2004 based on our budget status at the time of the survey mailing in December. As stated previously, if funds are not available and we decide not to expand the survey, we will conduct the annual supplemental mailing of the MQ315A, Apparel, with its existing OMB approval using the current definitions and industry coverage.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, the OMB approved the Current industrial Reports—''MQ315A, Apparel'', under OMB Control Number 0607–0395. The total burden hours associated with OMB Control Number 0607–0395 are 14,956 hours. We will provide copies of each form upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0001.

Dated: October 5, 2004.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 04–22854 Filed 10–8–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–819]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Aluminum Plate From South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

SUMMARY: On May 21, 2004, the Department of Commerce published its preliminary determination of sales at less than fair value of certain aluminum plate from South Africa. The period of investigation is October 1, 2002, through September 30, 2003.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margin for the investigated company is listed below in the section entitled ''Final Determination Margins.''

EFFECTIVE DATE: October 12, 2004.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Kate Johnson, AD/CVD Enforcement Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4007 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that certain aluminum plate from South Africa is being, or is likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 735 of the Act.

Case History

The preliminary determination in this investigation was published on May 21, 2004. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Aluminum Plate from South Africa,* 69 FR 29262 (*Preliminary Determination*).

During the period May 24—27 and June 7—11, 2004, we conducted the sales and cost verifications, respectively, of the questionnaire responses of Hulett Aluminium (Pty) Ltd. (Hulett), the sole respondent in this case.

On June 3, 2004, we postponed the final determination until October 4, 2004. *See Notice of Postponement of Final Antidumping Duty Determination: Certain Aluminum Plate from South Africa,* 69 FR 31346. On June 21, 2004, the petitioner, Alcoa Inc., requested a hearing. We received case and rebuttal briefs on July 28, 2004, and August 10, 2004, respectively, from the petitioner and Hulett. On August 23, 2004, the petitioner withdrew its request for a hearing.

Scope of Investigation

The merchandise covered by this investigation is 6000 series aluminum alloy, flat surface, rolled plate, whether in coils or cut-to-length forms, that is rectangular in cross section with or without rounded corners and with a thickness of not less than .250 inches

(6.3 millimeters). 6000 Series Aluminum Rolled Plate is defined by the Aluminum Association, Inc.

Excluded from the scope of this investigation are extruded aluminum products and tread plate.

The merchandise subject to this investigation is currently classifiable under subheading 7606.12.3030 of the *Harmonized Tariff Schedule of the United States* (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is October 1, 2002, through September 30, 2003.

Analysis of Comments Received

All issues raised in the case briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Gary Taverman, Acting Deputy Assistant Secretary for Import Administration, to Jeffrey May, Acting Assistant Secretary for Import Administration, dated October 4, 2004, which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculations. For a discussion of these changes, *see* the ''Margin Calculations'' section of the Decision Memorandum.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Final Determination Margins

The weighted-average dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
Hulett Aluminium (Pty) Ltd.	3.51
All Others	3.51

In accordance with section 735(c)(5)(A), we have based the ''all others'' rate on the dumping margin found for the producer/exporter investigated in this proceeding, Hulett.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of certain aluminum plate from South Africa that are entered, or withdrawn from warehouse, for consumption on or after May 21, 2004, the publication date of the preliminary determination in the **Federal Register**. CBP shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margin shown above. The suspension of liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine within 45 days whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: October 4, 2004.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in the Decision Memorandum

Comments

Comment 1: Decline of the U.S. Dollar Against the South African Rand.
Comment 2: Offsets for Non-Dumped Comparisons.
Comment 3: SACD Storage Fee.

[FR Doc. E4–2573 Filed 10–8–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–806]

Individually Quick Frozen Red Raspberries From Chile; Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative review of the antidumping duty order on individually quick frozen red raspberries from Chile. The period of review is December 31, 2001, through June 30, 2003. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: October 12, 2004.

FOR FURTHER INFORMATION CONTACT: Cole Kyle or Yasmin Bordas, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; at telephone (202) 482–1503 and (202) 482–3813, respectively.

Background

On August 6, 2004, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on individually quick frozen red raspberries from Chile

covering the period December 31, 2001, through June 30, 2003 (69 FR 47869). The final results for the antidumping duty administrative review of individually quick frozen red raspberries from Chile are currently due no later than December 6, 2004.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''the Act''), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

The Department recently received case briefs from the parties involved in this administrative review. The written arguments submitted in the case briefs include complicated issues involving the Department's cost of production methodologies in this case. It is not practicable to complete this review within the originally anticipated time limit (*i.e.*, by December 6, 2004), because we need additional time to analyze the written arguments. Therefore, the Department is extending the time limit for completion of the final results to no later than February 2, 2005, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 5, 2004.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–2574 Filed 10–8–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Certain Automotive Replacement Glass Windshields From the People's Republic of China: Notice of Partial Rescission of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 27, 2004, in response to timely requests from respondents subject to the order on certain automotive replacement glass (''ARG'') windshields from the People's Republic of China (''PRC''), in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''Department'') published in the **Federal Register** a notice of initiation of this antidumping duty administrative review of sales by certain exporters/producers. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 69 FR 30282 (May 27, 2004) (''*Initiation Notice*''). Because Dongguan Kongwan Automobile Glass, Ltd. (''Dongguan Kongwan''), Peaceful City, Ltd. (''Peaceful City''), and Fuyao Glass Industry Group Company, Ltd. (''Fuyao'') have withdrawn their requests for administrative review and the petitioners did not request an administrative review of these exporters, the Department is rescinding this review of sales by Dongguan Kongwan, Peaceful City, and Fuyao in accordance with 19 CFR 351.213(d)(1). The Department is now publishing its determination to rescind the review of sales of subject merchandise by Dongguan Kongwan, Peaceful City, and Fuyao for the period of review.

EFFECTIVE DATE: October 12, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Jon Freed, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3434, (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2002, the Department published in the **Federal Register** the antidumping duty order on ARG windshields from PRC. See *Antidumping Duty Order: Automotive Replacement Glass Windshields From the People's Republic of China,* 67 FR 16087 (April 4, 2002). On April 1, 2004, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on ARG windshields from the PRC for the period April 1, 2003, through March 31, 2004. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review,* 69 FR 17129 (April 1, 2004). On April 24, 2004, Dongguan Kongwan and Peaceful City requested an administrative review of its sales to the United States during the period of review (''POR''). On April 26, 2004, Fuyao requested an administrative review of its sales to the United States during the POR. The petitioners in the original investigation did not request an administrative review of any parties. On May 27, 2004, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of ARG from the PRC for the period April 1, 2003 through March 31, 2004. See *Initiation Notice.*

On June 14, 2003, the Department issued antidumping duty questionnaires to the respondents, including Dongguan Kongwan, Peaceful City, and Fuyao. On July 8, 2004, Fuyao submitted a letter to the Department withdrawing its request for an administrative review of sales and entries of subject merchandise it exported. On July 12, 2004, Dongguan Kongwan and Peaceful City submitted a letter to the Department withdrawing their requests for an administrative review of sales and entries of subject merchandise which they exported.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of requested review. Dongguan Kongwan, Peaceful City, and Fuyao withdrew their respective requests for review within the 90-day time limit and no other party requested reviews with respect to these companies. Accordingly, we are rescinding this administrative review as to those companies and will issue appropriate assessment instructions to the U.S. Bureau of Customs and Border Protection with respect to exports from Dongguan Kongwan, Peaceful City, and Fuyao for the period April 1, 2003, through March 31, 2004. The Department will continue its review of other exporters/producers as announced in the *Initiation Notice.* See 69 FR 30282.

This notice serves as a reminder to parties subject to administrative

protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of APO is a sanctionable violation.

This determination is issued in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Act.

Dated: September 29, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–2567 Filed 10–8–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808, A–475–822, A–580–831]

Stainless Steel Plate in Coils From Belgium, Italy, and the Republic of Korea; Extension of Final Results of Expedited Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of expedited sunset reviews: stainless steel plate in coils from Belgium, Italy, and the Republic of Korea.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for its final results in the expedited sunset reviews of the antidumping duty orders on stainless steel plate in coils from Belgium, Italy, and the Republic of Korea. Based on adequate responses from the domestic interested parties and inadequate responses from respondent interested parties, the Department is conducting expedited sunset reviews to determine whether revocation of the antidumping duty orders would lead to the continuation or recurrence of dumping. As a result of this extension, the Department intends to issue final results of these sunset reviews on or about October 15, 2004.

EFFECTIVE DATE: October 12, 2004.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq., Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4340.

Extension of Final Results

On April 1, 2004, the Department published its notice of initiation of sunset reviews of the antidumping duty orders on stainless steel plate in coils from Belgium, Italy, and the Republic of Korea. *See Initiation of Five-Year (Sunset) Reviews,* 69 FR 17129 (April 1, 2004). The Department determined that it would conduct expedited sunset reviews of these antidumping duty orders based on responses from the domestic interested parties and no responses from the respondent interested parties to the notice of initiation. The Department's final results of these reviews were scheduled for July 30, 2004 and extended to August 30, 2004. The Department, however, needs additional time to consider issues related to the appropriate margin(s) of dumping likely to prevail if the orders are revoked. Therefore, the Department intends to issue the final results on or about October 15, 2004, in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: September 29, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2568 Filed 10–8–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825, A–475–824, A–588–845, A–580–834, C–580–835, A–583–831, A–412–818]

Stainless Steel Sheet and Strip in Coils From Germany, Italy, Japan, Korea, Taiwan and the United Kingdom; Extension of Time Limit for the Final Results of Sunset Reviews of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the final results of sunset reviews of antidumping and countervailing duty orders: Stainless steel sheet and strip in coils from Germany, Italy, Japan, Korea, Taiwan and the United Kingdom.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for its final results in the sunset reviews of the antidumping duty orders on stainless steel sheet and strip in coils (''SSSS'') from Germany, Italy, Japan, Korea, Taiwan and the United Kingdom, and the countervailing duty order on SSSS from Korea. The Department intends to issue final results of these sunset reviews on or about November 15, 2004.

EFFECTIVE DATE: October 12, 2004.

FOR FURTHER INFORMATION CONTACT: Martha Douthit or Hilary Sadler, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050.

Extension of Final Results of Reviews

On June 1, 2004, the Department initiated sunset reviews of the antidumping duty orders on SSSS from Germany, Italy, Japan, Korea, Taiwan and the United Kingdom, and the countervailing duty order on SSSS from Korea. *See Initiation of Five-Year (Sunset) Reviews,* 69 FR 30874 (June 1, 2004). The Department, in these proceedings, determined that it would conduct expedited sunset reviews of these orders based on inadequate responses to the notice of initiation from respondent interested parties. The Department's final results of these reviews were scheduled for September 29, 2004. The Department, however, needs additional time to: Consider issues related to the appropriate margin(s) of dumping likely to prevail if the order is revoked which the Department will provide to the International Trade Commission, with respect to the antidumping duty orders on SSSS from Germany, Italy, Korea, Taiwan and the United Kingdom; take into account the large number of companies, with respect to the antidumping order on SSSS from Japan; and address the large number of issues and companies, with respect to the countervailing duty order on SSSS from Korea. Thus, the Department intends to issue the final results on or about November 15, 2004, in accordance with sections 751(c)(5)(B) and 751(c)(5)(C)(i), (ii) and (iii) of the Tariff Act of 1930, as amended.

Dated: September 29, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2564 Filed 10–8–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Agreement Suspending the Countervailing Duty Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel From Brazil; Correction to the Notice of Termination of Suspension Agreement and Notice of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Correction to notice of termination and notice of countervailing duty order.

EFFECTIVE DATE: October 12, 2004.

FOR FURTHER INFORMATION CONTACT: Sally Gannon or Jonathan Herzog, Office of Policy and Negotiations, Bilateral Agreements Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0162 or (202) 482–4271, respectively.

Background

On September 17, 2004, the Department of Commerce (''the Department'') published in the **Federal Register** notice of the termination of the Agreement Suspending the Countervailing Duty Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel from Brazil and notice of countervailing duty order. *See Agreement Suspending the Countervailing Duty Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel from Brazil; Termination of Suspension Agreement and Notice of Countervailing Duty Order,* 69 FR 56040 (September 17, 2004) (''*Termination Notice*''). In the *Termination Notice,* the Department inadvertently listed separate countervailing duty *ad valorem* rates for Usinas Siderurgicas de Minas Gerais, S.A. (''USIMINAS'') and Companhia Siderurgic Paulista (''COSIPA''). *See Termination Notice,* 69 FR at 56043. However, in the final determination of the underlying countervailing duty investigation, the Department determined USIMINAS and COSIPA to be affiliated under section 771(33)(E) of the Tariff Act of 1930, as amended (''the Act''), and calculated a single countervailing duty rate for both companies (*e.g.*, USIMINAS/COSIPA). *See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil,* 64 FR 38742, 38744 & 38755 (July 19, 1999). Therefore, the final countervailing duty *ad valorem* rate and cash deposit rate for USIMINAS/COSIPA is as follows:

Manufacturer/exporter	Net subsidy rate percent
USIMINAS/COSIPA	9.67

This notice is published in accordance with sections 704(i) and 777(i) of the Act. This order is published in accordance with section 706(a) of the Act.

Dated: September 28, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2565 Filed 10–8–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Recording Assignments

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 13, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *Susan.Brown@uspto.gov.* Include ''0651–0027 comment'' in the subject line of the message.
- Fax: 703–308–7407, marked to the attention of Susan Brown.
- Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Joyce R. Johnson, Manager, Assignment Division, Mail Stop 1450, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at (703) 308–9706; or by e-mail at Joyce.Johnson@uspto.gov.

SUPPLEMENTARY INFORMATION

I. Abstract

This collection of information is required by 35 U.S.C. 261 and 262 for patents and 15 U.S.C. 1057 and 1060 of the Trademark Act of 1946 for trademarks. These statutes permit the United States Patent and Trademark Office (USPTO) to record patent and trademark assignment documents, including transfers of properties (*i.e.* patents and trademarks), liens, licenses, assignments of interest, security interests, mergers, and explanations of transactions or other documents that record the transfer of ownership of a particular patent or trademark property from one party to another. Assignments are recorded for applications, patents, and trademark registrations.

The USPTO administers these statutes through 37 CFR part 3 (3.1–3.85) for patents and trademarks, and also 37 CFR 2.146 and 2.171 for trademarks. These rules permit the public, corporations, other federal agencies, and Government-owned or Government-controlled corporations to submit patent and trademark assignment documents and other documents related to title transfers to the USPTO to be recorded. In accordance with 37 CFR 3.54, the recording of an assignment document by the USPTO is an administrative action and not a determination of the validity of the document or of the effect that the document has on the title to an application, patent, or trademark.

Once the assignment documents are recorded, they are available for public inspection. The only exceptions are those documents that are sealed under secrecy orders according to 37 CFR 3.58 or related to unpublished patent applications maintained in confidence under 35 U.S.C. 122. The public uses these records to conduct ownership and chain-of-title searches. The public may view these records either at the USPTO or at the National Archives and Records Administration, depending on the date they were recorded. The public may also search patent and trademark assignment information online through the USPTO Web site at *http://www.uspto.gov.*

In order to assist the public in submitting assignment documents for recording, the USPTO developed patent and trademark assignment cover sheets that capture all of the necessary data for accurately recording various assignment documents. To record an assignment, the respondent must submit an appropriate cover sheet along with the assignment documents to be recorded. The USPTO provides two paper forms for this purpose, the Patent Recordation Form Cover Sheet (PTO–1595) and the

Trademark Recordation Form Cover Sheet (PTO–1594).

Customers may file patent assignment recordation requests electronically using the Electronic Filing System (EFS) software developed by the USPTO for secure transmission of patent applications and related documents over the internet. Customers who submit patent assignment recordation requests through EFS must complete the electronic transmittal forms provided within the electronic submission software. Patent assignment recordation requests that are prepared using the EFS software but are too large (over 100 megabytes) to be submitted over the internet may be copied onto a recordable compact disc (CD) and then mailed to the USPTO. The costs for submitting oversized electronic patent assignment recordation requests on CD were noted in the previous renewal of this collection, and these CD submissions are now being listed as a separate information requirement for the current renewal.

Customers may also submit assignments online by using the Electronic Patent Assignment System (EPAS) and the Electronic Trademark Assignment System (ETAS), which are available through the USPTO Web site. EPAS and ETAS are new systems developed by the USPTO that allow customers to fill out the required cover sheet information online using web-based forms and then attach the assignment documents to be submitted over the internet for recordation. These web-based forms for EPAS and ETAS submissions are being added to this collection.

This collection was previously approved by OMB in June 2002. In September 2002, OMB approved a change worksheet that reduced the burden estimates due to the USPTO receiving fewer assignment filings than expected. In September 2003, OMB approved another change worksheet that further reduced the burden estimates for this collection due to an overall decrease in assignment filings, although the percentage of electronic filings increased.

II. Method of Collection

By mail, facsimile, hand delivery, or electronically over the internet to the USPTO.

III. Data

OMB Number: 0651–0027.

Form Number(s): PTO–1594 and PTO–1595.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions; farms; the Federal Government; and state, local or tribal governments.

Estimated Number of Respondents: 331,294 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 30 minutes (0.5 hours) to complete the Trademark Recordation Form Cover Sheet (PTO–1594) and the Patent Recordation Form Cover Sheet (PTO–1595), to file an electronic patent assignment recordation request using EFS, to submit a patent assignment recordation request on CD, or to submit a patent or trademark assignment recordation request online using EPAS or ETAS. These estimates include the time to gather the necessary information, prepare the form, and submit the completed request.

Estimated Total Annual Respondent Burden Hours: 165,648 hours per year.

Estimated Total Annual Respondent Cost Burden: $30,479,232 per year.

The USPTO expects that the information in this collection will be prepared by both attorneys and paralegals. The estimated rate of $184 per hour used in this collection is an average of the paraprofessional rate of $81 per hour and the professional rate of $286 per hour for associate attorneys in private firms. Using the average rate of $184 per hour, the USPTO estimates that the respondent cost burden for submitting the information in this collection will be $30,479,232 per year.

Item	Form number	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Patent Recordation Form Cover Sheet	PTO–1595	30 minutes	277,098	138,549
Trademark Recordation Form Cover Sheet	PTO–1594	30 minutes	18,908	9,454
Electronic Patent Assignment Recordation Request (EFS)	None	30 minutes	5,651	2,826
Patent Assignment Recordation Request (CD)	None	30 minutes	10	5
Electronic Patent Assignment System (EPAS)	PTO–1595	30 minutes	18,636	9,318
Electronic Trademark Assignment System (ETAS)	PTO–1594	30 minutes	10,991	5,496
Totals			331,294	165,648

Estimated Total Annual Non-hour Respondent Cost Burden: $23,165,071 per year. There are no maintenance costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of capital start-up costs, recordkeeping costs, filing fees, and postage costs.

This collection has capital start-up and recordkeeping costs associated with submitting patent assignment recordation requests on CD. Electronic patent assignment requests that exceed 100 megabytes cannot be transmitted to the USPTO over the internet and instead may be transferred onto a CD for submission. This process requires additional supplies, including blank recordable CD media, CD labels, and padded envelopes for shipping. The USPTO estimates that the cost of these supplies will be approximately $5 per CD submission. The USPTO estimates that it will receive approximately 10 CD submissions per year, for a total of $50 in capital start-up costs for this collection.

The USPTO advises customers who submit oversized patent assignment requests on CD to retain a back-up copy of the CD and transmittal documentation for their records. The USPTO estimates that it will take an additional 5 minutes for the customer to produce a back-up CD copy and 2 minutes to print the transmittal documentation, for a total of 7 minutes (0.12 hours) for each CD submission. The USPTO estimates that it will receive 10 CD submissions per year, for a total of approximately 1 hour per year for producing the back-up CD copies and documentation. The USPTO expects that these back-up copies will be prepared by paraprofessionals with an estimated rate of $81 per hour, for a recordkeeping cost of $81 per year for the CD submissions.

There are also recordkeeping costs associated with submitting assignment documents electronically over the internet using EFS, EPAS, and ETAS. The USPTO recommends that customers

print and retain a copy of the acknowledgment receipt that appears on the screen after a successful submission. Customers will also receive an electronic copy of this receipt. The USPTO estimates that it will take 5 seconds (0.001 hours) to print a copy of the acknowledgment receipt and that approximately 35,278 submissions per year will be completed via EFS, EPAS, and ETAS, for a total of approximately 35 hours per year for printing this receipt. The USPTO expects that these receipts will be printed by paraprofessionals at an estimated rate of $81 per hour, for a recordkeeping cost of $2,835 per year for printing the acknowledgment receipts. Therefore, this collection has a total recordkeeping cost of $2,916.

This collection has filing fees associated with submitting patent and trademark assignment documents to be recorded. The filing fees for recording patent and trademark assignments are the same for both paper and electronic submissions. However, the filing cost for recording patent or trademark assignments varies according to the number of properties involved in each submission. The filing fee for submitting a trademark assignment as indicated by 37 CFR 2.6(b)(6) is $40 for recording the first property in a document and $25 for each additional property in the same document. The USPTO estimates that the average trademark assignment filing has one property plus five additional properties, for an average filing cost of $165 for a trademark assignment submission.

The filing fee for submitting a patent assignment as indicated by 37 CFR 1.21(h) is $40 for recording each property in a document. The USPTO estimates that paper and electronic patent assignment filings contain an average of 1.5 properties per submission, for an average filing cost of $60. The USPTO also estimates that oversized patent assignment requests on CD contain an average of 100 properties per submission, for an average filing cost of $4,000. The total estimated filing cost for this collection is $23,056,435 per year.

Item	Form number	Estimated annual responses	Average fee amount	Estimated annual filing costs
Patent Recordation Form Cover Sheet	PTO–1595	277,098	$60.00	$16,625,880.00
Trademark Recordation Form Cover Sheet	PTO–1594	18,908	165.00	3,119,820.00
Electronic Patent Assignment Recordation request (EFS)	None	5,651	60.00	339,060.00
Patent Assignment Recordation Request (CD)	None	10	4,000.00	40,000.00
Electronic Patent Assignment System (EPAS)	PTO–1595	18,636	60.00	1,118,160.00
Electronic Trademark Assignment System (ETA)	PTO–1594	10,991	165.00	1,813,515.00
Totals		331,294		$23,056,435.00

Customers may incur postage costs when submitting a patent or trademark assignment request to the USPTO by mail. The USPTO expects that some assignment requests will be submitted by fax but that approximately 215,622 of the 296,006 paper assignment requests per year will be submitted by mail. The USPTO estimates that the average first-class postage cost for a mailed Patent or Trademark Recordation Form Cover Sheet submission is 49 cents. The USPTO further estimates that 10 patent assignment requests on CD will be mailed to the USPTO per year and that the average first-class postage cost for a mailed CD submission is $1.52. The total postage cost for this collection is $105,670 per year.

The total non-hour respondent cost burden for this collection in the form of capital start-up costs, recordkeeping costs, filing fees, and postage costs is estimated to be $23,165,071 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 4, 2004.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 04–22780 Filed 10–8–04; 8:45 am]

BILLING CODE 3510–16–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 21 October 2004 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Frederick J. Lindstrom, Acting Secretary, Commission of Fine Arts, at the above address or call (202) 504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 28 September 2004.

Frederick J. Lindstrom,

Acting Secretary.

[FR Doc. 04–22810 Filed 10–8–04; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia and Amendment of Export Visa and Electronic Visa Information System (ELVIS) Requirements for Textiles and Textile Products Integrated into GATT 1994 in the First, Second and Third Stage

October 5, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits and amending visa and ELVIS requirements.

EFFECTIVE DATE: October 14, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 344–2650, or refer to the Bureau of Customs and Border Protection website at *http://www.cbp.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Cambodia will accede to the World Trade Organization (WTO) on October 14, 2004. In order to implement the WTO Agreement on Textiles and Clothing (ATC), the import restraint limits for textile products, produced or manufactured in Cambodia and exported during the period January 1, 2004 through December 31, 2004 are being adjusted effective on that date. In addition, the limits are being adjusted for additional carryover and swing, as well as to provide for the Labor Adjustment granted to Cambodia on January 1, 2004 (see 68 FR 68597, published on December 9, 2003).

The ATC provides for the staged integration of textiles and textile products into the General Agreement on Tariffs and Trade (GATT) 1994. For WTO members, the first stage of the integration took place on January 1, 1995, the second stage took place on January 1, 1998, and the third stage took place on January 1, 2002. The products to be integrated in each stage were announced on April 26, 1995 (see 60 FR 21075, published on May 1, 1995 and 63 FR 53881, published on October 7, 1998). The United States will implement the first three stages of integration for Cambodia effective October 14, 2004. Accordingly, certain previously restrained categories have been modified and their limits have been revised. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to adjust the 2004 limits.

The United States will not maintain visa and ELVIS requirements on textiles and textile products that were integrated in stage one, two and three, that were produced or manufactured in Cambodia and exported on or after October 14, 2004. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to eliminate existing visa and ELVIS requirements for textiles and textile products that were integrated on January 1, 1995, January 1, 1998 and January 1, 2002, and exported on or after October 14, 2004, produced or manufactured in Cambodia (see 66 FR 63225, published on December 5, 2001). The existing visa and ELVIS requirements for Cambodia will be maintained for goods exported prior to October 14, 2004.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 68597, published on December 9, 2003.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 5, 2004.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 2003 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concern imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Cambodia and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004.

Effective on October 14, 2004, you are directed to adjust the current limits for the following categories to reflect Cambodia's accession to the World Trade Organization (WTO), as provided for under the Uruguay Round Agreement on Textiles and Clothing

Category	Adjusted twelve-month limit [1]
331pt./631pt. [2]	187 dozen pairs.
334/634	274,134 dozen.
335/635	104,726 dozen.
338/339	4,309,875 dozen.
340/640	1,278,597 dozen.
345	132,759 dozen.
347/348/647/648	4,606,258 dozen.
352/652	1,033,188 dozen.
435	25,806 dozen.
438	123,985 dozen.
445/446	151,537 dozen.
638/639	1,582,973 dozen.
645/646	338,203 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

You are also directed to amend the current visa and ELVIS requirements for certain textiles and textile products produced or manufactured in Cambodia and exported on or after October 14, 2004.

Effective on October 14, 2004, for goods exported on or after October 14, 2004, export visas and ELVIS transmissions will not be required for textiles and textile products produced or manufactured in Cambodia that were integrated into the General Agreement on Tariffs and Trade (GATT) 1994 on January 1, 1995, January 1, 1998 and January 1, 2002 (see directive dated November 29, 2001). Export visas and ELVIS transmissions will continue to be required for products integrated on January 1, 2002 from Cambodia that were exported prior to October 14, 2004.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–2569 Filed 10–8–04; 9:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Commercial Availability Request Under the United States—Caribbean Basin Trade Partnership Act (CBTPA)

October 5, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of the request alleging that certain woven fabrics, of the specifications detailed below, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On August 3, 2004 the Chairman of CITA received four petitions from Sharretts, Paley, Carter & Blauvelt, P.C., on behalf of Fishman & Tobin, alleging that certain woven fabrics, of the specifications detailed below, classified in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel of such fabrics be eligible for preferential treatment under the CBTPA. Based on currently available information, CITA has determined that these subject fabrics can be supplied by the domestic industry in commercial quantities in a timely manner and therefore denies the request.

FOR FURTHER INFORMATION CONTACT: Martin J. Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2818.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Background:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On August 3, 2004, the Chairman of CITA received four petitions from Sharretts, Paley, Carter & Blauvelt, P.C., on behalf of Fishman & Tobin, alleging that certain woven fabrics, of the specifications detailed below, classified in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics. The petition for Fabric Number 2 was subsequently withdrawn.

On August 9, 2004, CITA solicited public comments regarding the three petitions (69 FR 48224), particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. On August 25, 2004, CITA and the Office of the U.S. Trade Representative offered to hold consultations with the relevant Congressional committees. We also requested the advice of the U.S. International Trade Commission and the relevant Industry Trade Advisory Committees.

Based on the information provided, including review of the petitions, public comments, advice received, and our knowledge of the industry, CITA has determined that certain woven fabrics, of the specifications detailed below, classified in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles, can be supplied by the domestic industry in commercial quantities in a timely manner. Sharretts, Paley, Carter & Blauvelt's requests are denied.

Specifications:

Fabric 1	**Twill Fabric**
HTS Subheadings:	5208.33.00.00 & 5209.32.00.20
Fiber Content:	100% Cotton
Width:	57/58 inches
Construction:	Two-ply in the warp and fill, of combed cotton ring spun yarns, 132 × 67, yarn sizes 40 × 2/21 × 2
Dyeing:	Continuous Dyeing
Fabric 3	**Fancy polyester filament fabric**
HTS Subheading:	5407.52.20.20, 5407.52.20.60, 5407.53.20.20 & 5407.53.20.60
Fiber Content:	100% Polyester
Width:	58/60 inches
Construction:	Plain, twill and satin weaves, in combinations of 75 denier, 100 denier, 150 denier, and 300 denier yarn sizes, with mixes of 25% cationic/75% disperse, 50% cationic/50% disperse, and 100% cationic.
Dyeing:	(Piece) dyed or of yarns of different colors
Fabric 4	**190T polyester lining fabric**
HTS Subheading:	5407.61.99.25–35
Fiber Content:	100% Polyester
Construction:	110 × 80, 68 denier × 68 denier
Dyeing:	Jet overflow and jet spinning methods

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–2570 Filed 10–8–04; 9:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Headquarters, U.S. Marine Corps

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Headquarters, U.S. Marine Corps, announces a proposed extension of an approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use

of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 13, 2004.

ADDRESSES: Send written comments and recommendations on the proposed information collection to Commandant of the Marine Corps, (Code OR), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Ms. Carla Offer at (703) 784–9449.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Academic Certification for Marine Corps Officer Candidate Program; OMB Control Number 0703–0011.

Needs and Uses: Used by Marine Corps officer procurement personnel, this form provides a standardized method for determining the academic eligibility of applicants for all reserve officer candidate programs. Use of this form is the only accurate and specific method to determine a reserve officer applicant's academic qualifications. Each applicant interested in enrolling in an undergraduate or graduate reserve officer commission program completes and returns the form.

Affected Public: Individuals or households.

Annual Burden Hours: 875.

Number of Respondents: 3,500.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A))

Dated: September 30, 2004.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 04–22775 Filed 10–8–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Headquarters, U.S. Marine Corps

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Headquarters, U.S. Marine Corps, announces a proposed extension of an approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 13, 2004.

ADDRESSES: Send written comments and recommendations on the proposed information collection to MCCDC, Training and Education Division, Head, Training Programs Branch, Code C462R, 2034 Barnett Avenue, Suite 201, Quantico, VA 22134–5012.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Mr. Les Wood at (703) 784–3705.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Individual MCJROTC Instructor Evaluation Summary; OMB Control Number 0703–0016.

Needs and Uses: This form provides a written record of the overall performance of duty of Marine instructors who are responsible for implementing the Marine Corps Junior Reserve Officers' Training Corps (MCJROTC). The Individual MCJROTC Instructor Evaluation Summary is completed by principals to evaluate the effectiveness of individual Marine instructors. The form is further used as a performance related counseling tool and as a record of service performance to document performance and growth of individual Marine instructors. Evaluating the performance of instructors is essential in ensuring that they provide quality training.

Affected Public: High school principals.

Annual Burden Hours: 225.

Number of Respondents: 450.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: Biennially.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A))

Dated: September 30, 2004.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 04–22776 Filed 10–8–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 12, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: October 5, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Annual Protection and Advocacy for Assistive Technology (PAAT) Program Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 896.

Abstract: This reporting instrument and web-based data collection system will provide for the collection of annual reports from the 56 PAAT grantees to the Secretary of Education as required by section 102 of the Assistive Technology Act of 1998. Information collected also will assist RSA staff in their management of the PAAT program, and in meeting GPRA reporting requirements. Data will be collected through an Internet form.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2596. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Bennie Jessup at her e-mail address *Bennie.Jessup@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–22781 Filed 10–8–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 13, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 5, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Revision.

Title: Vocational Technical Education Annual Performance and Financial Reports.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 54.

Burden Hours: 5,400.

Abstract: The information contained in the Consolidated Annual Performance Report for Vocational Technical Education is needed to monitor State performance of the activities and services funded under the Carl D. Perkins Vocational and Technical Education Act of 1998. The respondents include eligible agencies in 54 States and insular areas. This revision clarifies instructions and definitions and eliminates the collection of some data elements.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2624. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–22782 Filed 10–8–04; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Purchasing Instructions (BPI) and Bonneville Financial Assistance Instructions (BFIA)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the Bonneville Purchasing Instructions (BPI), which

contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of its purchases of goods and services, including construction, are available in printed form for $30, or without charge at the following Internet address: *http://www.bpa.gov/Corporate/kgp/bpi/bpi.htm.* Copies of the Bonneville Financial Assistance Instructions (BFAI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements), are available in printed form for $15 each, or available without charge at the following Internet address: *http://www.bpa.gov/Corporate/kgp/bfai/bfai.htm.*

ADDRESSES: Unbound copies of the BPI or BFAI may be obtained by sending a check for the proper amount to the Head of the Contracting Activity, Routing CK–1, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621.

FOR FURTHER INFORMATION CONTACT: Manager, Corporate Communications, 1–800–622–4519.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues rather than annual appropriations. BPA's purchasing operations are conducted under 16 U.S.C. 832 *et seq.* and related statutes. Pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities. It is significantly different from the Federal Acquisition Regulation, and reflects BPA's private sector approach to purchasing the goods and services that it requires. BPA's financial assistance operations are conducted under 16 U.S.C. 832 *et seq.*, and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implemenation of the principles provided in the following OMB circulars:

A–21 Cost Principles for Educational Institutions.

A–87 Cost Principles for State, Local and Indian Tribal Governments.

A–102 Grants and Cooperative Agreements with State and Local Governments.

A–110 Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations

A–122 Cost Principles for Non-Profit Organizations.

A–133 Audits of States, Local Governments and Non-Profit Organizations.

BPA's solicitations and contracts include notice of applicability and availability of the BPI and the BFAI, as appropriate, for the information of offerors on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on August 27, 2004.

Kenneth R. Berglund,

Manager, Contracts and Property Management.

[FR Doc. 04–22844 Filed 10–8–04; 8:45 am]

BILLING CODE 6550–01–M

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2004–0007; FRL–7826–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Identification, Listing and Rulemaking Petitions (Renewal), EPA ICR Number 1189.14, OMB Control Number 2050–0053

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its expected burden and cost.

DATES: Additional comments may be submitted on or before November 12, 2004.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2004–0007, to (1) EPA online using EDOCKET (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Resource Conservation and Recovery Act (RCRA) Docket, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Narendra Chaudhari, Office of Solid Waste, Mail Code 5304W, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703)308–0454; fax number: (703)308–0514; email address: *chaudhari.narendra@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 10, 2004 (69 FR 32545), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments on this ICR.

EPA has established a public docket for this ICR under Docket ID number RCRA–2004–0007, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202)566–1744, and the telephone number for the RCRA Docket is (202)566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the

official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/epadocket*.

Title: Identification, Listing and Rulemaking Petitions (Renewal).

Abstract: Under 40 CFR 260.20(b), all rulemaking petitioners must submit basic information with their demonstrations, including name, address, and statement of interest in the proposed action. Under § 260.21, all petitioners for equivalent testing or analytical methods must include specific information in their petitions and demonstrate to the satisfaction of the Administrator that the proposed method is equal to, or superior to, the corresponding method in terms of its sensitivity, accuracy, and reproducibility. Under § 260.22, petitions to amend part 261 to exclude a waste produced at a particular facility (more simply, to delist a waste) must meet extensive informational requirements. When a petition is submitted, the Agency reviews materials, deliberates, publishes its tentative decision in the **Federal Register**, and requests public comment. EPA also may hold informal public hearings (if requested by an interested person or at the discretion of the Administrator) to hear oral comments on its tentative decision. After evaluating all comments, EPA publishes its final decision in the **Federal Register**.

40 CFR 260.30–260.31, and 260.33 comprise the standards, criteria, and procedures for variances from classification as a solid waste for three types of materials, materials that are collected speculatively without sufficient amounts being recycled; materials that are reclaimed and then reused within the original primary production process in which they were generated; and materials which have been reclaimed, but must be reclaimed further before the materials are completely recovered. Under 40 CFR 260.32 and 260.33 are regulations governing the procedures and criteria for obtaining a variance for classification as a boiler. This variance is available to owners or operators of enclosed flame combustion devices.

40 CFR 261.3 and 261.4 contain provisions that allow generators to obtain a hazardous waste exclusion for certain types of wastes. Facilities applying for these exclusions must submit a notification, or supporting information and/or keep detailed records. Under § 261.3(a)(2)(iv), generators may obtain a hazardous waste exclusion for wastewater mixtures subject to Clean Water Act regulation. Under § 261.3(c)(2)(ii)(C), generators may obtain an exclusion for certain non-wastewater residues resulting from high temperature metals recovery (HTMR) processing of K061, K062 and F006 waste. Also, under § 261.4(a)(20)(ii)(A), generators and intermediate handlers may obtain a hazardous waste exclusion for zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers. In addition, under § 261.4(b)(6), generators of chromium-containing waste may obtain a hazardous waste exclusion under certain conditions.

Also addressed under this section is the shipment of samples between generators and laboratories for the purpose of testing to determine their characteristics or composition. Sample handlers who are not subject to the Department of Transportation (DOT) or the United States Postal Service (USPS) shipping requirements must comply with the information requirements of § 261.4(d)(2).

When intended for treatability studies, hazardous waste otherwise subject to regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA) is exempted from these regulations, provided that the requirements in § 261.4(e)–(f) are met, including the following information requests: initial notification, record keeping, reporting, and final notification. In addition, generators and collectors of treatability study samples also may request quantity limit increases and time extensions, as specified in § 261.4(e)(3).

40 CFR 261.31(b)(2)(ii) governs procedures and informational requirements for generators and treatment, storage and disposal facilities to obtain exemptions from listing as F037 and F038 wastes. Also under this section are regulations promulgated in 1990 under § 261.35(b) and (c) governing procedures and information requirements for the cleaning or replacement of all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams.

EPA anticipates that some data provided by respondents will be claimed as Confidential Business Information (CBI). Respondents may make a business confidentiality claim by marking the appropriate data as CBI. Respondents may not withhold information from the Agency because they believe it is confidential. Information so designated will be disclosed by EPA only to the extent set forth in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection varies depending on the type of petition or demonstration. For example, it is estimated that the average reporting burden per respondent ranges from 0.00 hours (equipment cleaning and replacement) to 788 hours (preparation of a delisting petition). The average recordkeeping burden per respondent ranges from 63.75 hours (equipment cleaning and replacement) to 1.75 hours (delisting petition). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Business.

Estimated Number of Respondents: 155.

Frequency of Response: Varies.

Estimated Total Annual Hour Burden: 21,511 hours.

Estimated Total Annualized Cost Burden: $2,206,000, includes $895,000 annualized capital/startup or O&M costs.

Changes in the Estimates: There is an increase of 701 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due primarily to respondents submitting a greater number of relatively more complex delisting petitions to EPA, which

require collection of additional information and more time to prepare the petitions. The burden increase is an adjustment to the existing estimates based on data gathered through consultations with EPA Regional Offices and the regulated community and not a result of program changes.

Dated: September 28, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–22872 Filed 10–8–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0015; FRL–7826–4]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Hospital/Medical/Infectious Waste Incinerators (40 CFR part 60, subpart Ec) (Renewal), ICR Number 1730.04, OMB Number 2060–0363

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 12, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0015, to (1) EPA online using EDOCKET (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, (Mail Code 2223A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 25, 2004 (69 FR 29718), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0015, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS for Hospital/Medical/Infectious Waste Incinerators (40 CFR part 60, subpart Ec) (Renewal).

Abstract: The New Source Performance Standards (NSPS) for Hospital/Medical/Infectious Waste Incinerators (HMIWI), burning hospital waste and/or medical infectious waste, are subject to specific reporting and recordkeeping requirements. Notification reports are required upon the construction, reconstruction, or modification of an HMIWI. Also, required are one-time-only reports of initial performance test data and continuous measurements of site-specific operating parameters. Annual compliance reports are required on a variety of site-specific operating parameters, including exceedance of applicable limits. Semiannual compliance reports of emission rates or operating parameter data that were not obtained when exceedances of applicable limits occurred are also required. Affected entities must retain reports and records for five years under 40 CFR part 60, subpart Ec and 40 CFR part 60, subpart A—General Provisions.

Co-fired combustors and incinerators burning only pathological, low-level radioactive, and/or chemotherapeutic waste are required to submit notification reports of an exemption claim, and an estimate of the relative amounts of waste and fuels to be combusted. These co-fired combustors and incinerators are also required to maintain records on a calendar quarter basis, of the weight of hospital waste combusted, the weight of medical/infectious waste combusted, and the weight of all other fuels and waste combusted.

All reports required under NSPS and the General Provisions are submitted to the respondent's state, tribal, or a local agency, whichever has been delegated enforcement authority by the EPA. The information is used by the EPA solely to determine that all sources subject to the NSPS are in compliance, and that the control system installed to comply with the standards is being properly operated and maintained. Based on reported information, EPA can decide which facilities should be inspected and what records or processes should be inspected at the facilities. The records that the owner/operators maintain would indicate to EPA whether facility

personnel are operating and maintaining control equipment properly. The NSPS for HMIWIs requires initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any start-up, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance and are required of all sources subject to NSPS.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average 145 hours per response. Burdens means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Facilities burning hospital waste and/or medical infectious waste.

Estimated Number of Respondents: 7.

Frequency of Response: Initially, annually, semiannually, on occasion.

Estimated Total Annual Hour Burden: 4,795 hours.

Estimated Total Annual Costs: $327,929, which includes $2,000 annualized capital/startup costs, $20,000 annual O&M costs, and $305,929 annual labor costs.

Changes in the Estimates: There is an increase of two hundred and fifty-four hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This is primarily due to an increase in the number of sources.

Dated: September 22, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–22873 Filed 10–8–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0357, FRL–7826–3]

Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR No. 0155.08; OMB Control No. 2070–0029; Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Certification of Pesticide Applicators; EPA ICR No. 0155.08; OMB Control No. 2070–0029. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before November 12, 2004.

FOR FURTHER INFORMATION CONTACT: Nathanael Martin, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *martin.nathanael@epa.gov.*

ADDRESSES: Submit your comments, referencing docket ID number OPP–2003–0357, to (1) EPA online using EDOCKET (our preferred method), by email to *opp-docket@epa.gov,* or by mail to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Mailcode: 7502C, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 31, 2004 (69 FR 16917). EPA received three comments on this ICR during the 60-day comment period and they are addressed in the ICR.

EPA has established a public docket for this ICR under Docket ID No. OPP–2003–0357, which is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. Please note, EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

ICR Title: Certification of Pesticide Applicators

ICR Status: This is a request for extension of an existing approved collection that is currently scheduled to expire on October 31, 2004. EPA is asking OMB to approve this ICR for

three years. Under 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: FIFRA allows the EPA to classify a pesticide as ''restricted use'' if the pesticide meets certain toxicity or risk criteria. Restricted use pesticides, because of their potential to harm human health or the environment, may be applied only by a certified applicator or by a person under the direct supervision of a certified applicator. A person must meet certain standards of competency to become a certified applicator. States can be delegated the certified applicator program, but it must be approved by the Agency before it can be implemented. In non-participating entities, EPA administers the certification program.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Burden Statement: The annual ''respondent'' burden for this ICR is estimated to be 4,412 hours. According to the Paperwork Reduction Act, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection, it is the time reading the regulations, planning the necessary data collection activities, conducting tests, analyzing data, generating reports and completing other required paperwork, and storing, filing, and maintaining the data. The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection appear at the beginning and the end of this document. In addition OMB control numbers for EPA's regulations, after initial display in the final rule, are listed in 40 CFR part 9.

The following is a summary of the burden estimates taken from the ICR:

Respondents/affected entities: You may be affected by this action if you run an EPA approved certified pesticide applicator program for restricted use pesticides or are a certified pesticide applicator using restricted use pesticides that must comply with requirements of Section 11 of the Federal Insecticide, Fungicide, and Rodenticide Act and 40 CFR part 171.

Estimated total number of potential respondents: 424,398.

Frequency of response: As needed or annually, depending on the category of respondent.

Estimated total/average number of responses for each respondent: 1–3.

Estimated total annual burden hours: 1,311,368.

Estimated total annual costs: $25,108,623.

Changes in the ICR since the last approval:

The estimated paperwork burden has increased slightly from 1,285,865 to 1,311,368 hours due to an expected increase in the number of certified commercial applicators participating in the EPA-administered program. EPA will begin administering a private applicator program in the Navajo Indian Country within the next 3 years, thus increasing the number of applicators subject to the information collection activities. The cost burden has risen as well, primarily as a result of inflation from $21,456,058 to $25,108,623.

Dated: September 28, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–22874 Filed 10–8–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

October 1, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 13, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1071.

Title: Rural Wireless Community VISION Program Essay Guidelines.

Form No.: Not Applicable.

Type of Review: Extension of a currently approved collection.

Respondents: State, local or tribal government.

Number of Respondents: 250.

Estimated Time Per Response: 8 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2,000 hours.

Total Annual Cost: Not Applicable.

Privacy Act Impact Assessment: Not Applicable.

Needs and Uses: The Commission is soliciting public comment on this information collection which received emergency OMB approval on 9/30/04. The Commission is requesting an extension (no change) in the reporting requirements in order to obtain the full three year clearance from OMB. The VISION Program essay guidelines describes the vision of rural communities for wireless connectivity and services as part of the Rural Wireless Community VISION Program, which is part of the Federal Rural Wireless Outreach initiative which coordinates activities between the U.S.

Department of Agriculture, Rural Utilities Service and the Federal Communications Commission, Wireless Telecommunications Bureau and other agencies in order to expedite the build-out of wireless telecommunications throughout the nation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–22881 Filed 10–8–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 04–3050]

Bureau Begins Audit of Operational Status of Licenses in the Paging and Radiotelephone Service and 929–930 MHz Band Exclusive Private Carrier Paging Channels

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document the Wireless Telecommunications Bureau (Bureau) announces it has mailed audit letters to licensees of all site-specific licenses operating under part 22, Paging and Radiotelephone Service with ''CD'' radio service code and all site-specific licenses operating in the 929–930 MHz band on exclusive private carrier paging channels with ''GS'' radio service. Licensees must respond to the audit letter, electronically, by November 12, 2004.

ADDRESSES: Federal Communications Commission 445 12th Street, SW., TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Denise D. Walter, Mobility Division, at 202–418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Public Notice*, DA 04–3050, released on September 29, 2004. The full text of this document is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Federal Communications Commission's copy contractor, Best Copy and Printing, Inc, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at *http://wireless.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at bmillin@fcc.gov.

1. On September 28, 2004, the Federal Communications Commission's (Commission) Wireless Telecommunications Bureau (Bureau) began its license audit of the operational status all site-specific licenses authorized in the Paging and Radiotelephone Service, part 22, subpart E, and site-specific licenses authorized on private carrier paging *exclusive* channels in the 929–930 MHz band, part 90, subpart P.

2. Every licensee holding authorizations in the above radio services must respond and certify, by November 12, 2004, that its authorized station(s) has not permanently discontinued operations from the date of initial constriction and operation pursuant to 47 CFR 22.317.

3. Audit letters were mailed to the licensees at their address of record. If a licensee received more than one audit letter, they must respond to each letter sent by the Commission in order to account for all of its call signs that are part of the audit. Licensees can use the *Audit Search* at *http://wireless.fcc.gov/licensing/audits/paging* to determine if a particular call sign is part of the audit. If the Audit Search shows a letter was mailed, the licensee is required to respond to the audit even though the audit letter was not received. For instructions on how to proceed in this instance, licensees should call the Commission at 717–338–2888 or 888-CALLFCC (888–225–5322) and select option 2.

4. The process for responding to the audit was included in the audit letter. A response is mandatory and must be submitted electronically by November 12, 2004. Failure to provide a timely response may result in the Commission presuming that the station(s) has permanently discontinued operations as described under 47 CFR 22.317, and thus the license may be presumed to have automatically cancelled. Failure to provide a timely response may also result in an enforcement action, including monetary forfeiture, pursuant to section 503(b)(1)(B) of the Communications Act and 47 CFR 1.80(a)(2).

Federal Communications Commission.

Linda Chang,

Associate Chief, Mobility Division.

[FR Doc. 04–22843 Filed 10–8–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2675]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

October 5, 2004.

Petitions for Reconsideration and Clarification have been filed in the Commission's Rulemaking proceedings listed in this public notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by October 27, 2004. *See* § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CC Docket No. 98–67, CC Docket No. 90–571, and CG Docket No. 03–123).

Number of Petitions Filed: 2.

Subject: In the Matter of the Amendment of the commission's Rules Regarding Dedicated Short-Range Communication Services in the 5.850–5.925 GH_Z Band) (WT Docket No. 01–90).

Amendment of Parts 2 and 90 of the Commission's Rules to Allocate the 5.850–5.925 GHz Band to the Mobile Service for Dedicated Short Range Communications of Intelligent Transportation Services (ET Docket No. 98–95, RM–9096).

Number of Petitions Filed: 4.

Subject: In the Matter of the review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01–338)

Number of Petitions Field: 1.

Subject: In the Matter of the Review of the Spectrum Sharing Plan Among Non-Geostationary satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands (IB Docket No. 02–364).

Amendment of Part 2 of the commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems (ET Docket No. 00–258).

Number of Petitions Filed: 5.

Subject: In the Matter of the Request to Update Default Compensation Rate for Dial-Around Calls from Payphones (WC Docket No. 03–225, RM–10568).

Number of petitions filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–22842 Filed 10–8–04; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, October 12, 2004, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Quadrennial Civil Money

Penalty Inflation Adjustment—Final Rule.

Discussion Agenda:

Memorandum and resolution re: Basel II Capital Framework; Proposed Supervisory Guidance on Internal Ratings-Based Systems for Retail Credit Risk for Regulatory Capital.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: October 5, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E4–2572 Filed 10–8–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 26, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Rogers Investments, LP, Russellville, Alabama, (Partnership), with Diane Rogers Barnes, Marietta, Georgia, and Robert Isaac Rogers, Jr., Russellville, Alabama, as general partners of Partnership, to acquire outstanding shares of Valley Bancshares, Inc., and thereby indirectly acquire voting shares of Valley State Bank, both of Russellville, Alabama.

Board of Governors of the Federal Reserve System, October 5, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–22773 Filed 10–8–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 5, 2004.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Unibanc Corp, Maywood, Nebraska; to acquire 100 percent of the voting shares of Farmers State Bank, Big Springs, Nebraska.

In connection with this application, Applicant also has applied to acquire Hendrickson–Kjeldgaard Agency, Big Springs, Nebraska, and thereby engage in general insurance activities in a town of less than 5,000 in population, pursuant to section 225.28(b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, October 5, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–22774 Filed 10–8–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (EDT), October 18, 2004.

PLACE: Spherix Call Center, Board Room, 12501 Willowbrook Road, Cumberland, MD 21502.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the September 20, 2004, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Investment policy quarterly review.

Parts Closed to the Public

4. Procurement.
5. Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 6, 2004.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 04–22900 Filed 10–6–04; 4:02 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 Type of Information Collection Request: New collection;

Title of Information Collection: Reporting of Suspected Research in Biomedical and Behavioral Research;

Form/OMB No.: OS–0990–New;

Use: The purpose of this information collection is to collect data on the observation of suspected research misconduct and the reporting of such misconduct to appropriate authorities to determine whether suspected research misconduct is underreported.

Frequency: One time;

Affected Public: Individuals or household, not-for-profit institutions;

Annual Number of Respondents 5,200;

Total Annual Responses: 3,900;

Average Burden Per Response: 20 minutes;

Total Annual Hours: 1,300;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Naomi.Cook@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer at the address below:

OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–New), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 30, 2004.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 04–22777 Filed 10–8–04; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 Type of Information Collection Request: New collection;

Title of Information Collection: Wave 4 Survey of Youth for the Federal Evaluation of Initiatives Funded Under Section 510 of the Maternal and Child Health Block Grant;

Form/OMB No.: OS–0990–New;

Use: This data collection will support the Health and Human Service's effort to document the impact of a select group of programs funded through the abstinence education provisions of the Personal Responsibility and Work Opportunity Reconcilation Act of 1996 as part of the Congressionally mandated evaluation of these programs.

Frequency: Reporting;

Affected Public: State, local, or tribal governments, individuals or households, not for profit institutions;

Annual Number of Respondents: 2,572;

Total Annual Responses: 2,572;

Average Burden Per Response: 45 minutes;

Total Annual Hours: 1,929.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov,* or call the Reports Clearance Office on (202) 690–8356. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–New), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: September 30, 2004.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 04–22778 Filed 10–8–04; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Statement of Organization, Functions, and Delegations of Authority

Part T (Agency for Toxic Substances and Disease Registry) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (50 FR 25129–25130, dated June 17, 1985, as amended most recently at 69 FR 86–87, dated January 2, 2004, is amended to reflect the consolidation of the Agency for Toxic Substances and Disease Registry budget execution functions within the Financial Management Office, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

Section T–B, Organization and Functions, is hereby amended as follows:

Delete item (5) of the functional statement for the *Office of the Director (TB),* and insert the following: (5) provides overall programmatic direction for planning and management oversight of allocated resources, human resource management and administrative support.

Delete item (5) of the functional statement for the *Office of Financial and Administrative Services (TB1),* and insert the following: (5) formulates the budget and provides overall programmatic direction for planning and management oversight of allocated resources.

Delete item (1) of the functional statement for the *Program Services Activity (TB612), Office of the Director (TB61), Division of Health Assessment and Consultation (TB6),* and insert the following: (1) Coordiantes the development of the Division's budget and provides overall programmatic direction for planning and management oversight of allocated resources.

The Chief Operating Officer, CDC, has been delegated the authority to sign general **Federal Register** notices for both the CDC and ATSDR.

Dated: September 29, 2004.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–22604 Filed 10–8–04; 8:45 am]

BILLING CODE 4160–70–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–04–0455X]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Learning from Principal Investigators of Research Projects Funded through the Extramural Prevention Research Program: How Can CDC Best Support Participatory Research and the Dissemination and Translation of Research Findings? — New—Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC).

Two of the current priorities of CDC are to (1) substantially increase CDC's extramural public health research portfolio and budget and (2) develop a more client-oriented or customer-focused approach in all of CDC's activities. As part of its strategy to strengthen and expand extramural public health research, CDC received new money from Congress in 1999 to establish an extramural prevention research program. This program would focus on linking the talents and skills of university-based scientists with the resources of health departments, community-based programs, and national organizations in order to try to better respond to the health needs of individual communities.

Through its first round, the Extramural Prevention Research Program (EPRP), then known as the Prevention Research Initiative, provided $12.5 million in funding annually to support 56 three-year research projects based in states and localities throughout the country. The topics of these research projects were as diverse as asthma, traumatic brain injuries, tobacco control, workplace safety, and health disparities. All of the projects were community-based, and approximately one-third used a participatory approach in which, rather than just having community members be subjects of the research as is the usual case, researchers were to engage members of the community being studied (*i.e.*, those who were expected to be the users of the research findings) in the research process itself. It is believed that engaging the users in the research will make it more likely that the research undertaken will address their actual needs and that they will be more likely to apply the research findings.

Because of this commitment, CDC and many other federal and non-federal funding agencies are very interested in funding participatory research. Yet, anecdotal information and findings from an evaluation project conducted by CDC suggested that funding programs may need to adjust their expectations, requirements, and communication strategies if they want to attract and adequately support the conduct of participatory research projects, and if they want to best support the dissemination and translation into practice of research findings. Therefore, this project will involve conducting one-on-one, semi-structured, open-ended, qualitative interviews with the principal investigators of the grants funded in the first round of the EPRP in order to learn how CDC can best support community-based and participatory research, and how it can best participate in the dissemination and translation of the studies' findings into practice. The approximate annualized burden is 36 hours.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Principal Investigators funded through the first round of the EPRP who self-report that they used a participatory research approach	30	1	45/60

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Principal Investigators funded through the first round of the EPRP who self-report that they did not use a participatory research approach	26	1	30/60

Dated: October 4, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–22819 Filed 10–8–04; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0034]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Medical Devices; Current Good Manufacturing Practices Quality System Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Devices; Current Good Manufacturing Practices Quality System Regulation'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 14, 2004 (69 FR 33035), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0073. The approval expires on September 30, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: October 4, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–22761 Filed 10–8–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0103]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry on Special Protocol Assessment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry on Special Protocol Assessment'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 9, 2004 (69 FR 41502), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0470. The approval expires on September 30, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: October 4, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–22762 Filed 10–8–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0442]

Agency Information Collection Activities; Proposed Collection; Comment Request; Recall Regulations (Guidelines)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's recall regulations (guidelines) and provides guidance to manufacturers on recall responsibilities.

DATES: Submit written or electronic comments on the collection of information by December 13, 2004.

ADDRESSES: Submit electronic comments on the collection of to information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR

1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA Recall Regulations—21 CFR Part 7 (OMB Control Number 0910–0249)

Section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371) and part 7 (21 CFR part 7), subpart C sets forth the recall regulations (guidelines) and provides guidance to manufacturers on recall responsibilities. The guidelines apply to all FDA-regulated products (i.e., food, including animal feed; drugs, including animal drugs; medical devices, including in vitro diagnostic products; cosmetics; and biological products intended for human use). These responsibilities include development of a recall strategy that requires time by the firm to determine the actions or procedures required to manage the recall (§ 7.42); providing FDA with complete details of the recall including reason(s) for the removal or correction, risk evaluation, quantity produced, distribution information, firm's recall strategy, a copy of any recall communication(s), and a contact official (§ 7.46); notifying direct accounts of the recall, providing guidance regarding further distribution, giving instructions as to what to do with the product, providing recipients with a ready means of reporting to the recalling firm (§ 7.49); submitting periodic status reports so that FDA may assess the progress of the recall. Status report information may be determined by, among other things evaluation return reply cards, effectiveness checks and product returns (§ 7.53); and providing the opportunity for a firm to request in writing that FDA terminate the recall (§ 7.55).

A search of the FDA database was performed to determine the number of recalls that took place during fiscal year 2003. The resulting number of recalls from this database search (2,375) is used in estimating the current annual reporting burden for this report. FDA estimates the total annual industry burden to collect and provide the above information to 201,875 burden hours.

The following is a summary of the estimated annual burden hours for recalling firms (manufacturers, processors, and distributors) to comply with the voluntary reporting requirements of FDA's recall regulations.

Recognizing that there may be a vast difference in the information collection and reporting time involved in different recalls of FDA's regulated products, FDA estimates on average the burden of collection for recall information to be as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Recall Strategy (§ 7.42)	2,375	1	2,375	15	35,625
Firm Initiated Recall & Public Warnings Recall Communications (§§ 7.46 and 7.49)	2,375	1	2,375	20	47,500
Recall Status Reports and Followup (§ 7.53)	2,375	4	9,500	10	95,000
Termination of a Recall (§ 7.55(b))	2,375	1	2,375	10	23,750
Total					201,875

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The annual reporting burdens are explained as follows:

Recall Strategy

Requests firms to develop a recall strategy including provision for public warnings and effectiveness checks. Under this portion of the collection of information, the agency estimates it will receive 2,375 responses annually.

Firm Initiated Recall and Recall Communications

Requests firms that voluntarily remove or correct voluntarily foods and drugs (human or animal), cosmetics, medical devices, and biologicals to immediately notify immediately the appropriate FDA district office of such actions. The firm is to provide complete details of the recall reason, risk evaluation, quantity produced, distribution information, firms' recall strategy, and a contact official as well as requires firms to notify their direct accounts of the recall and to provide recipients with a ready means of reporting to the recalling firm. Under these portions of the collection of information, the agency estimates it will receive 2,375 responses annually for each.

Recall Status Reports

Requests that recalling firms provide periodic status reports so FDA can ascertain the progress of the recall. This collection of information will generate approximately 9,500 responses annually.

Termination of a Recall

Provides the firm an opportunity to request in writing that FDA end the recall. The agency estimates it will receive 2,375 responses annually.

Dated: October 4, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–22763 Filed 10–8–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0079]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Specific Requirements on Content and Format of Labeling for Human Prescription Drugs of Geriatric Use Subsection in the Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Specific Requirements on Content and Format of Labeling for Human Prescription Drugs of Geriatric Use Subsection in the Labeling'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 22, 2004 (69 FR 34682), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0370. The approval expires on September 30, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: October 4, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–22764 Filed 10–8–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0161]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Request for Information From U.S. Processors That Export to the European Community

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Request for Information From U.S. Processors That Export to the European Community'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 9, 2004 (69 FR 41504), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0320. The approval expires on September 30, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: October 4, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–22765 Filed 10–8–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0132]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Premarket Approval of Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Premarket Approval of Medical Devices'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 9, 2004 (69 FR 41505), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0231. The approval expires on September 30, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: October 4, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–22766 Filed 10–8–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0575]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; 2004 National Tracking Survey of Prescription Drug Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''2004 National Tracking Survey of Prescription Drug Information'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 27, 2004 (69 FR 30313), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0279. The approval expires on June 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: October 4, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–22767 Filed 10–8–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0101]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents; and Requirements for Donor Notification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents; and Requirements for Donor Notification'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 12, 2004 (69 FR 41809), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0472. The approval expires on November 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: October 4, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–22768 Filed 10–8–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1549–DR]

Alabama; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1549–DR), dated September 15, 2004, and related determinations.

EFFECTIVE DATE: October 4, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 15, 2004:

Autauga, Baldwin, Bibb, Butler, Chilton, Choctaw, Clarke, Coffee, Conecuh, Coosa, Covington, Crenshaw, Dallas, Elmore, Escambia, Geneva, Greene, Hale, Jefferson, Lowndes, Marengo, Mobile, Monroe, Montgomery, Perry, Pickens, Shelby, Sumter, Talladega, Tuscaloosa, Washington, and Wilcox Counties for Public Assistance [Categories C through G] (already designated for Public Assistance [Categories A and B], including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours, and Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22863 Filed 10–8–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1549–DR]

Alabama; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama (FEMA–1549–DR), dated September 15, 2004, and related determinations.

EFFECTIVE DATE: September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 30, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030,

Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22864 Filed 10–8–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1549–DR]

Alabama; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1549–DR), dated September 15, 2004, and related determinations.

EFFECTIVE DATE: October 4, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 15, 2004:

Chambers, DeKalb, Henry, Houston, Jackson, Lauderdale, Limestone, Morgan, and Russell Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22865 Filed 10–8–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1549–DR]

Alabama; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1549–DR), dated September 15, 2004, and related determinations.

EFFECTIVE DATE: October 4, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 15, 2004:

Colbert, Madison, and Randolph Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22866 Filed 10–8–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1556–DR]

Ohio; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio (FEMA–1556–DR), dated September 19, 2004, and related determinations.

EFFECTIVE DATE: October 4, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 19, 2004:

Athens, Gallia, and Meigs Counties for Public Assistance.

Belmont, Carroll, Columbiana, Guernsey, Harrison, Jefferson, Monroe, Morgan, Muskingum, Noble, Perry, Tuscarawas, and Washington Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22867 Filed 10–8–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1556–DR]

Ohio; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–1556–DR), dated September 19, 2004, and related determinations.

DATES: Effective September 27, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 27, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22868 Filed 10–8–04; 8:45 am]

BILLING CODE 9110–10–U

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1552–DR]

Puerto Rico; Correction to Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Corrected notice.

SUMMARY: This notice corrects an amendment to the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–1552–DR), dated September 17, 2004, and related determinations.

EFFECTIVE DATE: October 4, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: This is a correction to Amendment No. 4 to Notice of a Major Disaster Declaration dated September 29, 2004, that listed the Municipality of Guayama as eligible for Public Assistance [Categories C–G], when it should have listed the Municipality of Guaynabo. Instead, the notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 17, 2004:

Adjuntas, Culebra, Guaynabo, Hormigueros, Jayuya, Las Marias, Luquillo, Maricao, and Trujillo Alto Municipalities for Public Assistance [Categories C-G] (already designated for debris removal and emergency protective measures (Categories A & B) under the Public Assistance program, including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours.)

Aguada, Aguadilla, Aguas Buenas, Aibonito, Arecibo, Arroyo, Barceloneta, Caguas, Camuy, Cayey, Cidra, Comerio, Corozal, Hatillo, Humacao, Las Piedras, Manati, Maunabo, Morovis, Naguabo, Orocovis, Patillas, Quebradillas, Rincon, Santa Isabel, Utuado, Vieques, Villalba, and Yabucoa Municipalities for Public Assistance [Categories C-G] (already designated for Individual Assistance and for debris removal and emergency protective measures (Categories A & B) under the Public Assistance program, including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours.)

Fajardo Municipality for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A & B) under the Public Assistance program, including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22862 Filed 10–8–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission: Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, November 18, 2004.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist Federal, State and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on November 18, 2004 at 6 p.m. at The Edward J. Hayden Public Library located at the Monastery, 1464 Diamond Hill Road, Cumberland, RI for the following reasons:

1. Approval of minutes.
2. Chairman's report.
3. Executive Director's report.
4. Financial budget.
5. Public Input.

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Michael Creasey,

Executive Director, BRVNHCC.

[FR Doc. 04–22811 Filed 10–8–04; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Migratory Bird Harvest Surveys

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service has submitted the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. If you wish to obtain copies of the proposed information collection requirement, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must submit comments on or before November 12, 2004.

ADDRESSES: Submit your comments on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA via facsimile or electronic mail: (202) 395–6566 (fax); or *OIRA_DOCKET@omb.eop.gov* (electronic mail). Please provide a copy of your comments to the Fish and Wildlife Service's Information Collection Clearance Officer via postal mail, electronic mail, or facsimile: 4401 N. Fairfax Dr., MS 222 ARLSQ, Arlington, VA 22203; *Hope_Grey@fws.gov* (electronic mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, or related forms, contact Hope Grey at(703) 358–2482, or electronically to *Hope_Grey@fws.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies be given an opportunity to comment on information collection and record keeping activities (*see* 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) have submitted a request to OMB to renew its approval of the collection of information for the Migratory Bird Harvest Surveys. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0015.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well-being. These responsibilities dictate the gathering of accurate data on various characteristics of migratory bird harvest. Knowledge attained by determining harvests and harvest rates of migratory game birds is used to regulate populations (by promulgating hunting regulations) and to encourage hunting opportunity, especially where crop depredations are chronic and/or lightly harvested populations occur. Based on information from harvest surveys, hunting regulations can be adjusted as needed to optimize harvests at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

This information collection approval request combines two sets of surveys (the Migratory Bird Hunter Survey and the Parts Collection Survey) and associated forms because they are interrelated and/or dependent upon each other. The Waterfowl Hunter Survey that was previously included in this information collection, and its associated forms (form 3–1823A and 3–2056G), have now been completely replaced by the Migratory Bird Hunter Survey and therefore are eliminated.

The Migratory Bird Hunter Survey is based on the Migratory Bird Harvest Information Program, under which each State annually provides a list of all licensed migratory bird hunters in the State. Randomly selected migratory bird hunters are sent either a waterfowl questionnaire (form 3–2056J), a dove and band-tailed pigeon questionnaire (form 3–2056K), a woodcock questionnaire (form 3–2056L), or a snipe, rail, gallinule, and coot questionnaire (form 3–2056M) and are asked to report their harvest of those species. The resulting estimates of harvest per hunter are combined with the complete list of migratory bird hunters to provide estimates of the total harvest of those species.

The Parts Collection Survey estimates the species, sex, and age composition of the harvest, and the geographic and temporal distribution of the harvest. Randomly selected successful hunters who responded to the Migratory Bird Hunter Survey the previous year are asked to complete and return a postcard (forms 3–165A and C) if they are willing to participate in the Parts Collection Survey. Respondents are provided postage-paid envelopes before the hunting season and asked to send in a wing or the tail feathers from each duck, goose, or coot (form 3–165) they harvest, or a wing from each woodcock, band-tailed pigeon, snipe, rail, or gallinule (form 3–165B) they harvest. The wings and tail feathers are used to identify the species, age, and sex of the harvested sample. Respondents are also asked to report on the envelope the date and location (state and county) of harvest for each bird. Results of this survey are combined with harvest estimates from the Migratory Bird Hunter Survey to provide species-specific national harvest estimates.

The combined results of these surveys enable the Service to evaluate the effects of season length, season dates, and bag limits on the harvest of each species, and thus help determine appropriate hunting regulations.

On March 29, 2004, we published in the **Federal Register** (69 FR 16283) a notice informing the public that we planned to submit the forms described below to OMB for approval under the Paperwork Reduction Act. We requested public comment on the information collection for 60 days, ending May 28, 2004. By that date, we did not receive any comments in response to the notice.

Title: Migratory Bird Harvest Surveys.

Approval Number: 1018–0015.

Service Form Number(s): 3–165, 3–165A–C, 3–2056J–M.

Frequency of Collection: Annually.

Description of Respondents: Individuals and households.

Number of Respondents: About 3,600,000 individuals are expected to participate in the Migratory Bird Harvest Information Program. Recent Service experience indicates that about 80,000 hunters will respond to the Migratory Bird Hunter Survey each year, and about 9,500 hunters will respond to the Parts Collection Survey annually.

Total Annual Burden Hours: Total annual burden is estimated to be 135,930 hours. The reporting burden is estimated to average 2 minutes per respondent for the Migratory Bird Harvest Information Program, 4 minutes per respondent for the Migratory Bird Hunter Survey, and 50 minutes per

respondent for the Parts Collection Survey.

We again invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C 552(a)).

Dated: September 30, 2004.

Hope G. Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 04–22846 Filed 10–8–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Sandhill Crane Harvest Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service has submitted the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. If you wish to obtain copies of the proposed information collection requirement, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must submit comments on or before November 12, 2004.

ADDRESSES: Submit your comments on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA via facsimile or electronic mail: (202) 395–6566 (fax); or *OIRA_DOCKET@omb.eop.gov* (electronic mail). Please provide a copy of your comments to the Fish and Wildlife Service's Information Collection Clearance Officer via postal mail, electronic mail, or facsimile: 4401 N. Fairfax Dr., MS 222 ARLSQ, Arlington, VA 22203; *Hope_Grey@fws.gov* (electronic mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, or related forms, contact Hope Grey at (703) 358–2482, or electronically to *Hope_Grey@fws.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR parts 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies be given an opportunity to comment on information collection and record keeping activities (*see* 5 CFR 1320.8(d)).

The U.S. Fish and Wildlife Service (we) have submitted a request to OMB to renew its approval of the collection of information for the Sandhill Crane Harvest Survey. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0023.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well-being. These responsibilities dictate the gathering of accurate data on various characteristics of migratory bird harvest. Knowledge attained by determining harvests and harvest rates of migratory game birds is used to regulate populations (by promulgating hunting regulations) and to encourage hunting opportunity, especially where crop depredations are chronic and/or lightly harvested populations occur. Based on information from harvest surveys, hunting regulations can be adjusted as needed to optimize harvests at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

This information collection renewal request seeks approval for us to continue conducting the Sandhill Crane Harvest Survey. This is an annual questionnaire survey of people who obtained a sandhill crane hunting permit. At the end of the hunting season, we randomly select a sample of permit holders and send those people a questionnaire that asks them to report the date, State, county, and number of birds harvested for each of their sandhill crane hunts. Their responses provide estimates of the temporal and geographic distribution of the harvest as well as the average harvest per hunter, which, combined with the total number of sandhill crane permits issued, enables the Service to estimate the total harvest of sandhill cranes.

The Sandhill Crane Harvest Survey enables us to annually estimate the magnitude of the harvest and the portion it constitutes of the total mid-continent sandhill crane population. Based on information from this survey, hunting regulations are adjusted as needed to optimize harvest at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

On March 29, 2004, we published in the **Federal Register** (69 FR 16282) a notice informing the public that we planned to submit the forms described below to OMB for approval under the Paperwork Reduction Act. We requested public comment on the information collection for 60 days, ending May 28, 2004. By that date, we did not receive any comments in response to the notice.

Title: Sandhill Crane Harvest Survey.

Approval Number: 1018–0023.

Service Form Number: 3–2056N.

Frequency of Collection: Annually.

Description of Respondents: Individuals and households.

Number of Respondents: About 7,500 hunters will respond to the Sandhill Crane Harvest Survey annually.

Total Annual Burden Hours: We estimate the reporting burden to average 5 minutes per respondent. Total annual burden is 625 hours.

We again invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C 552(a)).

Dated: September 30, 2004.

Hope G. Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 04–22847 Filed 10–8–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Bayou Cocodrie National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of Final Comprehensive Conservation Plan for Bayou Cocodrie National Wildlife Refuge located in Concordia Parish, Louisiana.

SUMMARY: The Fish and Wildlife Service announces that a Final Comprehensive Conservation Plan for Bayou Cocodrie National Wildlife Refuge is available for distribution. The plan was prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, and describes how the refuge will be managed for the next 15 years. The compatibility determinations for recreational hunting, recreational fishing, wildlife observation and photography, environmental education and interpretation, forest habitat management, trapping of selected furbearers, and all-terrain vehicle use are available within the plan.

ADDRESSES: A copy of the plan may be obtained by writing to the Bayou Cocodrie National Wildlife Refuge, P.O. Box 1772, Ferriday, Louisiana 71334. The plan may also be accessed and downloaded from the Service's Internet Web site: *http://southeast.fws.gov/planning/.*

SUPPLEMENTARY INFORMATION: Bayou Cocodrie National Wildlife Refuge, located in east-central Louisiana, consists of 13,168 acres within a 22,269-acre acquisition boundary. The refuge includes bottomland hardwood forests, marsh or herbaceous wetlands, swamps, streams, and lakes/deep-water habitats typical of the ridge and swale topography associated with bottomland hardwoods. The high quality forests, long growing season, abundant rainfall, and geographical proximity to the Mississippi River provide habitat for a diversity of resident species, including migratory songbirds and black bears. Annually, more than 5,500 visitors participate in refuge activities.

The availability of the Draft Comprehensive Conservation Plan and Environmental Assessment, for a 60-day public review and comment period, was announced in the **Federal Register** on June 12, 2001, Volume 68, Number 98. The draft plan and environmental assessment identified and evaluated three alternatives for managing the refuge over the next 15 years. Under Alternative A, the ''No Action Alternative,'' current management of the refuge would continue, and all lands within the acquisition boundary would be purchased. Under Alternative B, the ''Preferred Alternative,'' 42,269 acres of refuge lands would be protected, maintained, and enhanced for migratory nongame birds, threatened and endangered species, resident wildlife, waterfowl, and shorebirds. Under ''Alternative C,'' 59,269 acres of refuge lands would be protected, restored, and enhanced for migratory nongame birds, threatened and endangered species, and resident wildlife. Based on the environmental assessment and the comments received, the Service adopted Alternative B, the ''Preferred Alternative,'' minus the large acquisition component. Internal reviewers questioned the utility of the large land acquisition component of Alternative B relative to Region-wide funding and priorities. The Service concluded that if the lands within the existing refuge acquisition boundary were prioritized for land protection and acquisition, as analyzed in Alternative A, it would best achieve national, ecosystem, and refuge-specific goals and objectives. This would include meeting source population objectives of migratory songbirds and protecting Louisiana black bear habitat within anticipated funding and staffing levels. In addition, the action positively addresses significant issues and concerns expressed by the public.

FOR FURTHER INFORMATION CONTACT: Refuge Manager, Bayou Cocodrie National Wildlife Refuge, telephone: 318/336–7119; fax: 318/336–5610; e-mail: *bayoucocodrie@fws.gov*; or mail (write to Refuge Manager at address in **ADDRESSES** section).

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: August 7, 2004.

J. Mitch King,

Acting Regional Director.

[FR Doc. 04–22822 Filed 10–8–04; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4489; ES–052439, Group No. 26, Illinois]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Illinois.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM–Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the U.S. Army Corps of Engineers.

The lands we surveyed are:

Third Principal Meridian, Illinois

T. 4 N., R. 9 W.

The plat of survey represents the survey of an amended portion of the Locks and Dam No. 27 acquisition boundary, in Township 4 North, Range 9 West, of the Third Principal Meridian, in the State of Illinois, and was accepted on September 22, 2004.

We will place a copy of the plat we described in the open files. It will be made available to the public as a matter of information.

Dated: September 22, 2004.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 04–22807 Filed 10–8–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4489; ES–052438, Group No. 18, Illinois]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management.

ACTION: Notice of filing of plat of survey; Illinois.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450

Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the U.S. Army Corps of Engineers.

The lands we surveyed are:

Third Principal Meridian, Illinois

T. 3 S., R. 3 E.

The plat of survey represents the survey of an amended portion of the Rend Lake acquisition boundary, in Township 3 South, Range 3 East, of the Third Principal Meridian, in the State of Illinois, and was accepted on September 22, 2004.

We will place a copy of the plat we described in the open files. It will be made available to the public as a matter of information.

Dated: September 22, 2004.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 04–22809 Filed 10–8–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ–TRST; ES–052330, Group No. 154, Minnesota]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of Filing of Plat of Survey; Minnesota

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calender days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fifth Principal Meridian, Minnesota

T. 143 N., R. 39 W.

The plat of survey represents the dependent resurvey of a portion of the subdivisional lines; and the survey of the subdivision of section 15, and was accepted August 4, 2004. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: September 28, 2004.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 04–22805 Filed 10–8–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ–TRST; ES–052442, Group No. 156, Minnesota]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calender days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fifth Principal Meridian, Minnesota

T. 142 N., R. 39 W.

The plat of survey represents the dependent resurvey of a portion of the north, south and east boundaries and a portion of the subdivisional lines; the survey of the subdivision of sections 5, 6, 19, 20, 24, 30, and 36; and the corrective dependent resurvey of a portion of the east boundary; and the corrective survey of the subdivision of section 1, of Township 142 North, Range 39 West, Fifth Principal Meridian, in the State of Minnesota, and was accepted September 23, 2004. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: September 23, 2004.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 04–22806 Filed 10–8–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1430–BJ ES–052327, Group No. 25, Mississippi]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Mississippi.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Choctaw Meridian, Mississippi

T. 12 N., R. 13 E.

The plat of survey represents the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, the survey of the subdivision of section 12 and the metes and bounds survey of the Choctaw Indian Reservation boundary in section 12 in Township 12 North, Range 13 East, Choctaw Meridian, Mississippi, and was accepted on August 19, 2004.

We will place a copy of the plat we described in the open files. It will be made available to the public as a matter of information.

Date: August 19, 2004.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 04–22808 Filed 10–8–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region

ACTION: Notice request for comments—The Christmas Pageant of Peace.

SUMMARY: The National Park Service is seeking public comments and suggestions on the planning of the 2004 Christmas Pageant of Peace, which opens on December 2, 2004, on the Ellipse (President's Park), south of the White House. The meeting will be held at 1 p.m. on November 18, 2004, in Room 234 of the National Capital Region Headquarters Building, at 1100 Ohio Drive, SW., Washington, DC (East Potomac Park).

Persons who would like to comment at the meeting should notify the National Park Service by November 15, 2004 by calling the White House Visitor Center weekdays between 9 a.m. and 4 p.m., at (202) 208–1631. Written comments may be sent to the Park Manager, White House Visitor Center 1100 Ohio Drive, SW., Washington, DC 20242, and will be accepted until November 18, 2004.

DATES: The meeting will be held on November 18, 2004. Written comments will be accepted until November 18, 2004.

ADDRESSES: The meeting will be held at 1 p.m. on November 18, 2004, in room 234 of the National Capital Region Headquarters Building, at 1100 Ohio Drive, SW., Washington, DC (East Potomac Park). Written comments may be sent to the Park Manager, White House Visitor Center 1100 Ohio Drive, SW., Washington, DC 20242. Due to delays in mail delivery, it is recommended that comments be provided by telefax at 202–208–1643 or by email at *Rachel_frantum@nps.gov* Comments may also be delivered by messenger to the White House Visitor Center at 1450 Pennsylvania Avenue, NW., in Washington, DC

FOR FURTHER INFORMATION CONTACT: Rachel Frantum at the White House Visitor Center weekdays between 9 a.m., and 4 p.m., at (202) 208–1631.

Dated: September 22, 2004.

Maria Santo,

Deputy Director, White House Liaison, National Park Service.

[FR Doc. 04–22824 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–JK–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 11, 2004. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 27, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARIZONA

Pima County

Canoa Ranch Headquarters Historic District, (Cattle Ranching in Arizona MPS) 5555 S AZ 19, Green Valley, 04001158

Robles Ranch House, 16130 W. Ajo Hwy, Robles Junction, 04001157

San Clemente Historic District, SE corner Alvernon and Broadway, Tucson, 04001156

CALIFORNIA

Tuolumne County

Yosemite Valley, Yosemite National Park, Yosemite, 04001159

KANSAS

Sedgwick County

Buildings at 800 West Douglas Block, 809, 811, and 815 W. Douglas, Wichita, 04001160

MISSOURI

Jackson County

Christian Church Hospital, 2524 W. Paseo Blvd., Kansas City, 04001161

St. Louis Independent city

Central Institute for the Deaf Clinic and Research Building, 909 S. Taylor Ave., St. Louis (Independent City), 04001163

Pacini, Armando, Restaurant, 8 S. Sarah St., St. Louis (Independent City), 04001162

SOUTH CAROLINA

Charleston County

Greek Orthodox Church of the Holy Trinity, 30 Race St., Charleston, 04001164

TEXAS

Bexar County

Buckeye Park Gate, 1600 W. Wildwood, San Antonio, 04001169

Chinese Sunken Garden Gate, (Sculpture by Dionicio Rodriguez in Texas MPS) Brackenridge Park, 400 N. St. Mary's St., San Antonio, 04001167

Dionicio Rodriguez Bridge in Brackenridge Park, (Sculpture by Dionicio Rodriguez in Texas MPS) 400 N. St. Mary's St., San Antonio, 04001166

Jacala Restaurant, (Sculpture by Dionicio Rodriguez in Texas MPS) 2702 N. St. Mary's St., San Antonio, 04001168

Miraflores Park, (Sculpture by Dionicio Rodriguez in Texas MPS) 800 Hildebrand, San Antonio, 04001176

Stations of the Cross and Grotto at the Shrine of St. Anthony de Padua, (Sculpture by Dionicio Rodriguez in Texas MPS) 100 Peter Baque Rd., San Antonio, 04001170

Trolley Stop in Alamo Heights, (Sculpture by Dionicio Rodriguez in Texas MPS) 4900 blk of Broadway, Alamo Heights, 04001165

Brazoria County

Gazebo for James Richard Marmion, (Sculpture by Dionicio Rodriguez in Texas MPS) 1214 County Rd., Sweeny, 04001173

Palapa Table for James Richard Marmion, (Sculpture by Dionicio Rodriguez in Texas MPS) 1214 County Rd., Sweeny, 04001172

Harris County

Woodlawn Garden of Memories Cemetery, (Sculpture by Dionicio Rodriguez in Texas MPS) 1101 Antoine, Houston, 04001174

Jefferson County

Eddingston Court, (Sculpture by Dionicio Rodriguez in Texas MPS) 3300 Proctor St., Port Arthur, 04001175

Kendall County

Gazebo for Alber Steves, (Sculpture by Dionicio Rodriguez in Texas MPS) 105 FM 473, at east portion of property, Comfort, 04001171

[FR Doc. 04–22769 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–51–U

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 18, 2004. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 27, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ALASKA

Prince of Wales-Outer K. Borough-Census Area

Tree Point Lighthouse, (Light Stations of the United States MPS) West coast of the

mainland, E side of Southern entrance to the Revillagigedo Channel about 4.25 mi. N of Cape Fox, Ketchiken, 04001177

COLORADO

Denver County

Sherman Street Historic District, Approx. 1000 to 1099 Sherman St., Denver, 04001178

CONNECTICUT

Fairfield County

Hampton Inn, 179 Oenoke Ridge Rd., New Canaan, 04001208

GEORGIA

Emanuel County

Swainsboro Light and Water Plant, Bounded by East Moring and South Coleman Sts. and the Norfolk Southern Railway, Swainsboro, 04001184

Fulton County

Great Atlantic & Pacific Tea Company, 881 Memorial Dr., Atlanta, 04001183
Palmer House and Phelan House Apartments, 952 Peachtree St. and 81 and 93 Peachtree Place, Atlanta, 04001182

Glynn County

Ballard School, 323 Old Jesup Hwy., Brunswick, 04001181

Henry County

Henderson Manufacturing Company, 10 James St., Hampton, 04001180

Irwin County

Ocilla Public School, 4th and Alder Sts., Ocilla, 04001186

Liberty County

Ripley, Sam, Farm, 1337 Dorchester Village Rd., Midway, 04001187

Richmond County

Bath Presbyterian Church and Cemetery, Edie Bath Rd., 0.5 mi. W of U.S. 1, Blythe, 04001179

Sumter County

Teel—Crawford—Gaston Plantation, 2154 GA 30 W, Americus, 04001188

Thomas County

Thomasville Commercial Historic District (Boundary Increase and Decrease), Downtown Thomasville bet. Jefferson St. and Smith Ave. and bet. Crawford And Siexas St., Thomasville, 04001185

KANSAS

Leavenworth County

Evans Site, (Prehistoric Sites of Stranger Creek Basin, Kansas MPS) Address Restricted, Tonganoxie, 04001190
Scott Site, (Prehistoric Sites of Stranger Creek Basin, Kansas MPS) Address Restricted, Tonganoxie, 04001189

NEVADA

Carson City Independent city

Virginia and Truckee Railway Locomotive #27, 2180 S. Carson St., Carson City (Independent City), 04001198

Churchill County

Fallon City Hall, 55 E. Williams Ave., Fallon, 04001197

NEW JERSEY

Cumberland County

Indian Head Site, Address Restricted, Deerfield Township, 04001196

Hunterdon County

Dawlis Mill—Spring Mill Historic District, 525 and 530 NJ 31, East Amwell, 04001192

Somerset County

VanDerventer—Brunson House, 614 Greenbrook Rd., North Plainfield Borough, 04001191

Warren County

Ramsaysburg Homestead, NJ 46, Knowlton, 04001194

NEW YORK

Monroe County

Marson, George G., House, 39 Dunning Ave., Webster, 04001206

New York County

Biltmore Theater, 261–265 W. 47th St., New York, 04001203

Orange County

Everett—Bradner House, 156 South St., Goshen, 04001204

St. Lawrence County

Pickens Hall, 83 State St., Heuvelton, 04001205

Suffolk County

West Meadow Beach Historic District, Trustees Rd., Stony Brook, 04001195

Westchester County

Peekskill Freight Depot, 41 S. Water St., Peekskill, 04001207

OHIO

Allen County

West Market Street Boulevard Historic District, 1410–1529 W. Market St., Lima, 04001201

Harrison County

Deersville Historic Distirct, Roughly along W. Main St. from 230 W. Main St. to 212 Wl. Main St., Deersville, 04001199

Huron County

Huron County Children's Home, 190 Benedict Ave., Norwalk, 04001200

TEXAS

Comal County

Natural Bridge Caverns Sinkhole Site, Address Restricted, Natural Bridge Caverns, 04001202

[FR Doc. 04–22770 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–51–U

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 25, 2004. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 27, 2004.

Patrick W. Andrus,

Acting, Keeper of the National Register of Historic Places.

GEORGIA

Harris County

Thornton Plantation, 702 Piedmont Lake Rd. and 404 Hopkins Farm Rd., Pine Mountain, 04001212

Liberty County

Bowens, Eddie, Farm, 660 Trade Hill Rd., Seabrook, 04001209

MASSACHUSETTS

Middlesex County

Boutell—Hathorn House, 280 Wobun St., Wilmington, 04001210

NEW JERSEY

Bergen County

Iviswold,
223 Montross Ave., Rutherford, 04001213

OHIO

Summit County

Cofta, Albert, Farmstead, (Agricultural Resources of the Cuyahoga Valley MPS) 2966 Brush Rd., Richfield, 04001214

VERMONT

Chittenden County

Downtown Essex Junction Commercial Historic District, 3–17 and 8–12 Main St., 2–28 Railroad Ave., and 2 Railroad St., Essex Junction, 04001216

Windsor County

Fletcher—Fullerton Farm, (Agricultural Resources of Vermont MPS) 3615 Fletcher Hill Rd. Extension, Woodstock, 04001215

A request for REMOVAL has been received for the following resource:

MINNESOTA

Wright County

Simpson Methodist Episcopal Church (Wright County MRA) 4th and Linn Sts. Monticello, 79001276

[FR Doc. 04–22771 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the American Museum of Natural History, New York, NY. The human remains were removed from an unknown site along the Columbia River in either Oregon or Washington.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Chehalis Reservation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Jamestown S'Klallam Tribe of Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Nooksack Indian Tribe of Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Quileute Tribe of the Quileute Reservation, Washington; Quinault Tribe of the Quinault Reservation, Washington; Samish Indian Tribe, Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Upper Skagit Indian Tribe of Washington.

Prior to 1872, human remains representing a minimum of 16 individuals were removed by unknown persons from an unknown site along the Columbia River in either Oregon or Washington. The human remains were donated to the American Museum of Natural History by Dr. Joseph Simms in 1872. No known individuals were identified. No associated funerary objects are present.

The human remains have been identified as Native American based on the presence of cranial deformation and museum documentation that refers to the human remains as ''Chinook.'' The crania exhibit intentional shaping of the type practiced by Chinookan groups that occupied the area around the Columbia River. There is no direct evidence of the age of the human remains. The Columbia River Chinook are currently represented by the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Grande Ronde Community of Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Quinault Tribe of the Quinault Reservation, Washington; and Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 16 individuals of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Grande Ronde Community of Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Quinault Tribe of the Quinault Reservation, Washington; and Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5837, before November 12, 2004. Repatriation of the human remains to the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Grande Ronde Community of Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Quinault Tribe of the Quinault Reservation, Washington; and Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington may proceed after that date if no additional claimants come forward.

The museum is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Chehalis Reservation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Jamestown S'Klallam Tribe of Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Nooksack Indian Tribe of Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Quileute Tribe of the Quileute Reservation, Washington; Quinault Tribe of the Quinault Reservation, Washington; Samish Indian Tribe, Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Upper Skagit Indian Tribe of

Washington that this notice has been published.

Dated: August 23, 2004.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–22831 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Anasazi Heritage Center, Dolores, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, Bureau of Land Management, Anasazi Heritage Center, Dolores, CO. The human remains and associated funerary objects were removed from sites in Archuleta, Dolores, La Plata, and Montezuma Counties, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Bureau of Land Management, Anasazi Heritage Center professional staff in consultation with representatives of the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and Zuni Tribe of the Zuni Reservation, New Mexico.

At an unknown date prior to 1983, human remains representing a minimum of nine individuals were removed from an unknown location during excavations conducted by Clifford and Ruth Chappell. In 1982, Ruth Chappell donated the human remains to the Anasazi Historical Society. In 1997, the Anasazi Historical Society donated the human remains to the Bureau of Land Management, Anasazi Heritage Center. No known individuals were identified. No associated funerary objects are present.

On the basis of field notes from Clifford and Ruth Chappell in the possession of the Bureau of Land Management, Anasazi Heritage Center, the archeological context for the human remains is inferred to date to the Basketmaker III-Pueblo III periods (A.D. 500–1350).

In 1939, human remains representing a minimum of one individual were removed from site 5DL859, on private land in Dolores County, CO, during excavations conducted by Clifford and Ruth Chappell. In 1982, Ruth Chappell donated the human remains to the Anasazi Historical Society. In 1997, the Anasazi Historical Society donated the human remains to the Bureau of Land Management, Anasazi Heritage Center. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5DL859 dates to the Pueblo II-Pueblo III periods (A.D. 900–1350).

In 1943, human remains representing a minimum of one individual were removed from site 5MT2343, on private land in Montezuma County, CO, during excavations by Clifford and Ruth Chappell. In 1982, Ruth Chappell donated the human remains to the Anasazi Historical Society. In 1997, the Anasazi Historical Society donated the human remains to the Bureau of Land Management, Anasazi Heritage Center. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT2343 dates to the Basketmaker III-Pueblo III periods (A.D. 500–1350).

In 1966, human remains representing a minimum of one individual were removed from site 5MT3798, on private land in Montezuma County, CO, during excavations conducted by Clifford and Ruth Chappell. In 1982, Ruth Chappell donated the human remains to the Anasazi Historical Society. In 1997, the Anasazi Historical Society donated the human remains to the Bureau of Land Management, Anasazi Heritage Center. No known individual was identified. The four associated funerary objects are two ceramic vessels and two stone tools.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT3798 dates to the Pueblo II-Pueblo III periods (A.D. 900–1350).

In 1953, human remains representing a minimum of one individual were removed from site 5MT3813, on private land in Montezuma County, CO, during excavations conducted by Clifford and Ruth Chappell. In 1982, Ruth Chappell donated the human remains to the Anasazi Historical Society. In 1997, the Anasazi Historical Society donated the human remains to the Bureau of Land Management, Anasazi Heritage Center. No known individual was identified. The one associated funerary object is a ceramic vessel.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT3813 dates to the Pueblo II-Pueblo III periods (A.D. 900–1350).

In 1949, human remains representing a minimum of one individual were removed from site 5MT4450, on private land in Montezuma County, CO, during excavations conducted by Clifford and Ruth Chappell. In 1982, Ruth Chappell donated the human remains to the Anasazi Historical Society. In 1997, the Anasazi Historical Society donated the human remains to the Bureau of Land Management, Anasazi Heritage Center. No known individual was identified. The one associated funerary object is a bone tool.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT4450 dates to the Basketmaker III-Pueblo III periods (A.D. 500–1350).

In 1939 and 1948, human remains representing a minimum of seven individuals were removed from site 5MT4803, located on private land in Montezuma County, CO, during excavations conducted by Clifford and Ruth Chappell. In 1982, Ruth Chappell donated the human remains to the Anasazi Historical Society. In 1997, the

Anasazi Historical Society donated the human remains to the Bureau of Land Management, Anasazi Heritage Center. No known individuals were identified. The nine associated funerary objects are six ceramic vessels, two bone tools, and one sandal last.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT4803 dates to the Pueblo I-Pueblo III periods (A.D. 750–1350).

In 1969, human remains representing a minimum of one individual were removed from site 5DL16, near Cross Canyon, Dolores County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5DL16 dates to the Pueblo II period (A.D. 900–1150).

In 1969, human remains representing a minimum of one individual were removed from site 5DL24, near Cahone Canyon, Dolores County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5DL24 dates to the Pueblo I-III periods (A.D. 750–1350).

In 1969, human remains representing a minimum of one individual were removed from site 5DL25, near Cahone Canyon, Dolores County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5DL25 dates to the Pueblo I-III periods (A.D. 750–1350).

In 1969, human remains representing a minimum of two individuals were removed from site 5DL64, near Squaw Canyon, Dolores County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5DL64 dates to the Pueblo II period (A.D. 900–1150).

In 1969, human remains representing a minimum of one individual were removed from site 5DL65, near Squaw Canyon, Dolores County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5DL65 dates to the Pueblo II period (A.D. 900–1150).

In 1969, human remains representing a minimum of two individuals were removed from site 5DL66, near Squaw Canyon, Dolores County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5DL66 dates to the Pueblo II period (A.D. 900–1150).

In 1969, human remains representing a minimum of one individual were removed from site 5DL75, in Alkali Draw, Dolores County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5DL75 dates to the Pueblo I period (A.D. 750–900).

In 1967, human remains representing a minimum of one individual were removed from site 5DL504, near Squaw Canyon, Dolores County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5DL504 dates to the Pueblo I-Pueblo III periods (A.D. 750–1350).

In 1968, human remains representing a minimum of one individual were removed from site 5DL554, near Cross and Papoose Canyons, Dolores County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5DL554 dates to the Pueblo II-Pueblo III periods (A.D. 900–1350).

In 1968, human remains representing a minimum of one individual were removed from site 5DL555, near Papoose Canyon, Dolores County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5DL555 dates to the Pueblo II-Pueblo III periods (A.D. 900–1350).

In 1966, human remains representing a minimum of two individuals were removed from site 5MT540, near Hovenweep Canyon, Montezuma County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individuals were identified. The four associated funerary objects are three partial ceramic bowls and one stone tool.

On the basis of archeological context, ceramic evidence, and other types of artifactual evidence, site 5MT540 dates to the Pueblo I-Pueblo II periods (A.D. 750–1150).

In 1966, human remains representing a minimum of one individual were

removed from site 5MT544, near Hackberry Canyon, Montezuma County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT544 dates to the Pueblo I-Pueblo III periods (A.D. 750–1350).

In 1967, human remains representing a minimum of two individuals were removed from site 5MT789, near Ruin Canyon, Montezuma County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and artifactual evidence, site 5MT789 dates to the Pueblo I-Pueblo III periods (A.D. 750–1350).

In 1967, human remains representing a minimum of one individual were removed from site 5MT822, near Cow Canyon, Montezuma County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT822 dates to the Pueblo II-Pueblo III periods (A.D. 900–1350).

In 1968, human remains representing a minimum of one individual were removed from site 5MT1601, near Sandstone Canyon, Montezuma County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT1601 dates to the Pueblo II-Pueblo III periods (A.D. 900–1350).

In 1968, human remains representing a minimum of one individual were removed from site 5MT1607, near Negro Canyon, Montezuma County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT1607 dates to the Pueblo II-Pueblo III periods (A.D. 900–1350).

In 1968, human remains representing a minimum of one individual were removed from site 5MT1610, near Sandstone Canyon, Montezuma County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other artifactual evidence, site 5MT1610 dates to the Pueblo II-Pueblo III periods (A.D. 900–1350).

In 1968, human remains representing a minimum of one individual were removed from site 5MT1646, near Hovenweep Canyon, Montezuma County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT1646 dates to the Pueblo II-Pueblo III periods (A.D. 900–1350).

In 1968, human remains representing a minimum of one individual were removed from site 5MT1648, near Hovenweep Canyon, Montezuma County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT1648 dates to the Pueblo II period (A.D. 900–1150).

In 1968, human remains representing a minimum of one individual were removed from site 5MT1737, near Goodman Gulch, Montezuma County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT1737 dates to the Pueblo II-Pueblo III periods (A.D. 900–1350).

In 1969, human remains representing a minimum of one individual were removed from site 5MT2037, near McElmo Creek, Montezuma County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other artifactual evidence, site 5MT2037 dates to the Pueblo III period (A.D. 1150–1350).

In 1969, human remains representing a minimum of one individual were removed from site 5MT2050, near Cahone Canyon, Montezuma County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT2050 dates to the Pueblo I period (A.D. 750–900).

In 1969, human remains representing a minimum of two individuals were removed from site 5MT2064, near Cross Canyon, Montezuma County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual

evidence, site 5MT2064 dates to the Pueblo I-Pueblo II periods (A.D. 750–1150).

In 1969, human remains representing a minimum of one individual were removed from site 5MT2067, near Cross Canyon, Montezuma County, CO, by University of Colorado staff as part of the Dolores Grazing District Block Survey. The human remains were physically transferred from the University of Colorado to the Anasazi Heritage Center in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT2067 dates to the Pueblo I-Pueblo II periods (A.D. 750–1150).

In 1954 and 1955, human remains representing a minimum of 23 individuals were removed from unknown site locations within Montezuma, Dolores and La Plata Counties, CO, during data recovery efforts undertaken by the El Paso Northwest Pipeline project. The El Paso Pipeline project donated the human remains to the Bureau of Land Management in 1983. No known individuals were identified. No associated funerary objects are present.

On the basis of other artifactual material within this collection, the human remains from this project were removed from occupations dating to the Basketmaker III-Pueblo III periods (A.D. 500–1350).

In 1979, human remains representing a minimum of one individual were removed from site 5DL2, located on private land near Cahone Canyon, Dolores County, CO, by University of Colorado staff as part of the Mid-Atlantic Pipeline Company (MAPCO) pipeline project. The landowner donated the human remains to the Bureau of Land Management in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, and other types of artifactual evidence, site 5DL2 dates to the Pueblo I period (A.D. 750–900).

In 1979, human remains representing a minimum of one individual were removed from site 5LP379, near the Animas River, La Plata County, CO, by University of Colorado staff as part of the MAPCO pipeline project. MAPCO donated the human remains to the Bureau of Land Management in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5LP379 dates to the Pueblo I period (A.D. 750–900).

In 1979, human remains representing a minimum of one individual were removed from site 5MT5456, near the Dolores River, Montezuma County, CO, by University of Colorado staff as part of the MAPCO pipeline project. MAPCO donated the human remains to the Bureau of Land Management in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT5456 dates to the Pueblo II period (A.D. 900–1150).

In 1979, human remains representing a minimum of one individual were removed from site 5MT5498, near the Dolores River, Montezuma County, CO, by University of Colorado staff as part of the MAPCO pipeline project. MAPCO donated the human remains to the Bureau of Land Management in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT5498 dates to the Pueblo I-Pueblo II periods (A.D. 750–1150).

In 1979, human remains representing a minimum of three individuals were removed from site 5MT5501, near the Dolores River, Montezuma County, CO, by University of Colorado staff as part of the MAPCO pipeline project. MAPCO donated the human remains to the Bureau of Land Management in 1983. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT5501 dates to the Pueblo II period (A.D. 900–1150).

In 1980, human remains representing a minimum of one individual were removed from site 5MT5771, near Yellowjacket Canyon, Montezuma County, CO, by University of Colorado staff as part of a Shell Oil Company construction project on Federal lands managed by the Bureau of Land Management. The University of Colorado transferred physical custody of the human remains to the Bureau of Land Management in 1983. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT5771 dates to the Pueblo II period (A.D. 900–1150).

In 1971, human remains representing a minimum of one individual were removed from site 5MT194, near Woods Canyon, Montezuma County, CO, by Bureau of Land Management, San Juan Field Office staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT194 dates to the Pueblo II period (A.D. 900–1150).

In 1974, human remains representing a minimum of 28 individuals were removed from site 5MT4126, on private land near McElmo Creek, Montezuma County, CO, during excavations conducted by Joel Brisbin. Mr. Brisbin donated the human remains to the Bureau of Land Management, Anasazi Heritage Center in 1984. No known individuals were identified. The one associated funerary object is a ceramic vessel.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT4126 dates to the Pueblo II period (A.D. 900–1150).

In 1975 and 1976, human remains representing a minimum of three individuals were removed from site 5MT2148, near the Dolores River, Montezuma County, CO, during data recovery efforts undertaken by University of Colorado staff, under contract to the Bureau of Land Management. No known individuals were identified. The 48 associated funerary objects are 11 pendants or medallions, 11 pottery sherds, 7 stone tools, 6 ceramic vessels, 5 lots of loose beads, 5 bone tools, and 3 mat/textile impressions.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT2148 dates to the Pueblo II period (A.D. 900–1150).

In 1975 and 1976, human remains representing a minimum of two individuals were recovered from site 5MT2149, near the Dolores River, Montezuma County, CO during data recovery efforts undertaken by University of Colorado staff, under contract with the Bureau of Land Management. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT2149 dates to the Pueblo II period (A.D. 900–1150).

In 1986, human remains representing a minimum of one individual were removed from site 5MT6887, near

McElmo Creek, Montezuma County, CO, during data recovery efforts undertaken by Allen Kane, under contract with the landowner, the Archaeological Conservancy. The Archaeological Conservancy donated the human remains to the Bureau of Land Management in 1986. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT6887 dates to the Pueblo I-Pueblo III periods (A.D. 750–1350).

In 1976, human remains representing a minimum of three individuals were removed from site 5MT532, near Hovenweep Canyon, Montezuma County, CO, by Bureau of Land Management archeologist Doug Scott while conducting systematic reconnaissance of archeological sites. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT532 dates to the Pueblo I-Pueblo III periods (A.D. 750–1350).

In 1978 and 1979, human remains representing a minimum of three individuals were removed from site 5MT1700, near Yellowjacket Canyon, Montezuma County, CO, during data recovery efforts undertaken by Centuries Research, Inc., as part of the Sacred Mountain Planning Unit Class II Survey. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT1700 dates to the Pueblo II-Pueblo III periods (A.D. 900–1350).

In 1978 and 1979, human remains representing a minimum of one individual were removed from site 5MT4927, near Yellowjacket Canyon, Montezuma County, CO, during data recovery efforts undertaken by Centuries Research, Inc., as part of the Sacred Mountain Planning Unit Class II Survey. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT4927 dates to the Pueblo II-Pueblo III periods (A.D. 900–1350).

In the mid–1970s, human remains representing a minimum of five individuals were removed from site 5MT9735, on private land near the Dolores River, Montezuma County, CO, during groundbreaking for house construction. In 1986, the landowner donated the human remains to the Bureau of Land Management. No known individuals were identified. The two associated funerary objects are partial ceramic vessels.

On the basis of archeological context, architectural evidence, tree-ring dates, ceramic evidence, and other types of artifactual evidence, site 5MT9735 dates to the Pueblo II period (A.D. 900–1150).

In 1982, human remains representing a minimum of one individual were removed from site 5MT7244, near the Mancos River, Montezuma County, CO, during construction of fencing around the U.S. Department of Agriculture, Forest Service, San Juan National Forest, Mancos Ranger Station. Custody and control for the human remains was transferred from the Forest Service to the Bureau of Land Management in 1988. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, ceramic evidence, and other types of artifactual evidence, site 5MT7244 dates to the Pueblo I period (A.D. 750–900).

At an unknown date prior to 1988, human remains representing a minimum of two individuals were removed from site 5AA86, in the U.S. Department of Agriculture, Forest Service, San Juan National Forest, Chimney Rock District, Archuleta County, CO. In 1988, the Forest Service transferred custody and control of the human remains to the Bureau of Land Management. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, ceramic evidence, and other types of artifactual evidence, 5AA86 dates to the Pueblo II period (A.D. 900–1150).

Between 1989 and 1990, human remains representing a minimum of three individuals were removed from an unknown location on U.S. Department of Agriculture, Forest Service lands in the vicinity of the San Juan National Forest, McPhee Reservoir, Montezuma County, CO, following erosion that had exposed the grave sites. In 1990, the Forest Service, San Juan National Forest transferred custody and control of the human remains to the Bureau of Land Management. No known individuals were identified. No associated funerary objects are present.

On the basis of the archeological context of sites in the McPhee Reservoir area, the human remains are inferred to date to the Basketmaker III-Pueblo III periods (A.D. 500–1350).

In 1979, human remains representing a minimum of two individuals were removed from an unrecorded site location on Squaw Point, Dolores County, CO, by Bureau of Land Management archeologist Max Witkind, following vandalization of the site by unknown individuals. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological evidence, within the vicinity of the vandalized site, the human remains are inferred to date to the Pueblo I-Pueblo III periods (A.D. 750–1350).

In 1971, human remains representing a minimum of one individual were removed from site 5LP366, near Junction Creek, LaPlata County, CO, during data recovery efforts undertaken by the Bureau of Land Management, San Juan Field Office staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5LP366 dates to the Basketmaker III period (A.D. 500–750).

From 1983 through 1987, human remains representing a minimum of 14 individuals were removed from site 5MT3868, on private land between Crow and Alkali Canyons, Montezuma County, CO, during excavations conducted by Crow Canyon Archaeological Center. In 1993, the landowner donated the human remains to the Bureau of Land Management, Anasazi Heritage Center. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, tree-ring dates, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT3868 dates to the Pueblo I period (A.D. 850–875).

In 1987 and 1988, human remains representing a minimum of one individual were recovered from site 5MT3901, in Sand Canyon, Montezuma County, CO, during excavations conducted by Crow Canyon Archaeological Center under contract to the Bureau of Land Management. No known individual was identified. The four associated funerary objects are four partial ceramic vessels.

On the basis of archeological context, tree-ring dates, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT3901 dates to the Pueblo III period (A.D. 1200–1350).

Between 1968 and 1974, human remains representing a minimum of nine individuals were removed from site 5MT948, on Federal land managed by the Bureau of Land Management on

Mockingbird Mesa, Montezuma County, CO, during excavations directed by Dr. John Ives of Fort Lewis College. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT948 dates to Pueblo II-Pueblo III periods (A.D. 900–1350).

Between 1968 and 1974, human remains representing a minimum of three individuals were removed from site 5MT972, on Federal land managed by the Bureau of Land Management on Mockingbird Mesa, Montezuma County, CO, during excavations directed by Dr. John Ives of Fort Lewis College. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, 5MT972 dates to the Pueblo II period (A.D. 900–1150).

Between 1968 and 1974, human remains representing a minimum of four individuals were removed from site 5MT997, on Federal land managed by the Bureau of Land Management on Mockingbird Mesa, Montezuma County, CO, during excavations directed by Dr. John Ives of Fort Lewis College. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT997 dates to the Pueblo I period (A.D. 750–900).

Between 1968 and 1974, human remains representing a minimum of 10 individuals were removed from site 5MT1604, on Federal land managed by the Bureau of Land Management on Mockingbird Mesa, Montezuma County, CO, during excavations directed by Dr. John Ives of Fort Lewis College. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT1604 dates to the Pueblo I period (A.D. 750–900).

Between 1968 and 1974, human remains representing a minimum of two individuals were removed from site 5MT7295, on Federal land managed by the Bureau of Land Management on Mockingbird Mesa, Montezuma County, CO, during excavations directed by Dr. John Ives of Fort Lewis College. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT7295 dates to the Basketmaker III period (A.D. 500–750).

Between 1968 and 1974, human remains representing a minimum of two individuals were removed from site 5MT7323, on Federal land managed by the Bureau of Land Management on Mockingbird Mesa, Montezuma County, CO, during excavations directed by Dr. John Ives of Fort Lewis College. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT7323 dates to the Pueblo II-Pueblo III periods (A.D. 900–1350).

Between 1968 and 1974, human remains representing a minimum of 16 individuals were removed from unknown locations on Federal land managed by the Bureau of Land Management on Mockingbird Mesa, Montezuma County, CO, during excavations directed by Dr. John Ives of Fort Lewis College. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, associated with habitation sites on Mockingbird Mesa, the human remains are inferred to date to the Basketmaker III-Pueblo III periods (A.D. 500–1350).

Between 1988 and 1991, human remains representing a minimum of one individual were removed from site 5MT3918, on Federal lands managed by the Bureau of Land Management in the vicinity of Sand Canyon, Montezuma County, CO, during excavations conducted by Crow Canyon Archaeological Center, as part of the Sand Canyon Project Site Testing Program. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT3918 dates to the Pueblo III period (A.D. 1150–1350).

Between 1988 and 1991, human remains representing a minimum of one individual were removed from site 5MT3930, on Federal lands managed by the Bureau of Land Management in the vicinity of Sand Canyon, Montezuma County, CO, during excavations conducted by Crow Canyon Archaeological Center, as part of the Sand Canyon Project Site Testing Program. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT3930 dates to the Pueblo III period (A.D. 1150–1350).

Between 1988 and 1991, human remains representing a minimum of one individual were removed from site 5MT3936, on Federal lands managed by the Bureau of Land Management in the vicinity of Sand Canyon, Montezuma County, CO, during excavations conducted by Crow Canyon Archaeological Center, as part of the Sand Canyon Project Site Testing Program. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT3936 dates to the Pueblo III period (A.D. 1150–1350).

Between 1988 and 1991, human remains representing a minimum of one individual were removed from site 5MT3951, on Federal lands managed by the Bureau of Land Management in the vicinity of Sand Canyon, Montezuma County, CO, during excavations conducted by Crow Canyon Archaeological Center, as part of the Sand Canyon Project Site Testing Program. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT3951 dates to the Pueblo III period (A.D. 1150–1350).

Between 1988 and 1991, human remains representing a minimum of one individual were removed from site 5MT3967, on Federal lands managed by the Bureau of Land Management in the vicinity of Sand Canyon, Montezuma County, CO, during excavations conducted by Crow Canyon Archaeological Center, as part of the Sand Canyon Project Site Testing Program. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, 5MT3967dates to the Pueblo III period (A.D. 1150–1350).

Between 1988 and 1991, human remains representing a minimum of one individual were removed from site 5MT5152, in the vicinity of Sand Canyon, Montezuma County, CO, during excavations conducted by Crow Canyon Archaeological Center, as part of the Sand Canyon Project Site Testing Program. No known individual was

identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT5152 dates to the Pueblo III period (A.D. 1150–1350).

Between 1988 and 1991, human remains representing a minimum of one individual were removed from site 5MT10246, on Federal lands managed by the Bureau of Land Management in the vicinity of Sand Canyon, Montezuma County, CO, during excavations conducted by Crow Canyon Archaeological Center, as part of the Sand Canyon Project Site Testing Program. No known individuals were identified. The nine associated funerary objects are one bone tube, one bag of lithics, one pollen sample, one flotation sample, and five pottery fragments.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT10246 dates to the Pueblo III period (A.D. 1150–1350).

Between 1988 and 1991, human remains representing a minimum of two individuals were removed from site 5MT10459, on Federal lands managed by the Bureau of Land Management in the vicinity of Sand Canyon, Montezuma County, CO, during excavations conducted by Crow Canyon Archaeological Center, as part of the Sand Canyon Project Site Testing Program. No known individuals were identified. The one associated funerary object is a ceramic mug.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT10459 dates to the Pueblo III period (A.D. 1150–1350).

Between 1988 and 1991, human remains representing a minimum of one individual were removed from site 5MT10508, on Federal lands managed by the Bureau of Land Management in the vicinity of Sand Canyon, Montezuma County, CO, during excavations conducted by Crow Canyon Archaeological Center, as part of the Sand Canyon Project Site Testing Program. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT10508 dates to the Pueblo III period (A.D. 1150–1350).

Between 1988 and 1991, human remains representing a minimum of one individual were removed from site 5MT11338, on Federal lands managed by the Bureau of Land Management in the vicinity of Sand Canyon, Montezuma County, CO, during excavations conducted by Crow Canyon Archaeological Center, as part of the Sand Canyon Project Site Testing Program. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT11338 dates to the Pueblo III period (A.D. 1150–1350).

During the 1950s or 1960s, human remains representing a minimum of one individual were removed from an unknown location on Bureau of Land Management land near Dawson Draw, Montezuma County, CO, by a private individual. In 1975, the individual donated the human remains to the Denver Museum of Natural History. In 1994, the Denver Museum of Natural History transferred physical custody of the human remains to the Bureau of Land Management, Anasazi Heritage Center. No known individual was identified. No associated funerary objects are present.

On the basis of ceramic and other artifactual evidence, the human remains date to the Pueblo II-Pueblo III periods (A.D. 900–1350).

During the 1950s or 1960s, human remains representing a minimum of 11individuals were removed from an unknown location on Bureau of Land Management land near Hovenweep Canyon, Montezuma County, CO, by a private individual. In 1975, the individual donated the human remains to the Denver Museum of Natural History. In 1994, the Denver Museum of Natural History transferred physical custody of the human remains to the Bureau of Land Management, Anasazi Heritage Center. No known individuals were identified. No associated funerary objects are present.

On the basis of ceramic evidence, and other types of artifactual evidence, the human remains date to the Pueblo II-Pueblo III periods (A.D. 900–1350).

During the 1950s or 1960s, human remains representing a minimum of one individual were removed from an unknown site location on Bureau of Land Management property near Narraguinnap Canyon, Dolores County, CO, by a private individual. In 1975, the individual donated the human remains to the Denver Museum of Natural History. In 1994, the Denver Museum of Natural History transferred physical custody of the human remains to the Bureau of Land Management, Anasazi Heritage Center. No known individual was identified. No associated funerary objects are present.

On the basis of ceramic evidence, and other types of artifactual evidence, the human remains date to the Pueblo II-Pueblo III periods (A.D. 900–1350).

In the 1940s, human remains representing a minimum of five individuals were removed from unknown locations on Bureau of Land Management land in Montezuma and Dolores Counties, CO. At an unspecified time, unknown persons donated the human remains to the Henderson Museum, University of Colorado. In 1995, Henderson Museum transferred physical custody of the human remains to the Bureau of Land Management, Anasazi Heritage Center. No known individuals were identified. No associated funerary objects are present.

On the basis of ceramic evidence and other types of artifactual evidence present in the collections, the human remains date to the Pueblo II-Pueblo III periods (A.D. 900–1350).

Between 1984 and 1994, human remains representing a minimum of 22 individuals were removed from Sand Canyon Pueblo (site 5MT765), at the head of Sand Canyon, Montezuma County, CO, during excavations conducted by Crow Canyon Archeological Center, as part of the Sand Canyon Archaeological Project. No known individuals were identified. The 188 associated funerary objects are 128 pottery fragments, 21 flotation/pollen samples, 16 stone tools, 10 ceramic vessels, 5 pieces of animal bone, 3 pieces of shell, 1 wooden plank, 1 pendant, 1 abrader, 1 mano, and 1 bone tool.

On the basis of archeological context, architectural evidence, tree-ring dates, ceramic evidence, and other types of artifactual evidence, the Sand Canyon Pueblo dates to the Pueblo III period (A.D. 1200–1285).

Between 1990 and 1994, human remains representing a minimum of two individuals were removed from Castle Rock Pueblo (site 5MT1825), on Federal land managed by the Bureau of Land Management near McElmo Creek, Montezuma County, CO, during excavations conducted by Crow Canyon Archaeological Center. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, tree-ring dates, ceramic evidence, and other types of artifactual evidence, the Castle Rock Pueblo dates to the Pueblo III period (A.D. 1256–1285).

Between 1994 and 1996, human remains representing a minimum of one individual were removed from Woods Canyon Pueblo (site 5MT11842), on Federal lands managed by the Bureau of

Land Management on the rim of Woods Canyon, Montezuma County, CO, during excavations conducted by Crow Canyon Archeological Center. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, tree-ring dates, ceramic evidence, and other types of artifactual evidence, Woods Canyon Pueblo dates to the Pueblo III period (A.D. 1140–1285).

In 1970, human remains representing a minimum of one individual were removed from site 5AA83, in the U.S. Department of Agriculture, Forest Service, San Juan National Forest, Chimney Rock District, Archuleta County, CO, during excavations conducted by University of Colorado staff. In 2001, the U.S. Forest Service transferred custody and control of the human remains to the Bureau of Land Management, Anasazi Heritage Center. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5AA83 dates to the Pueblo II period (A.D. 900–1150).

Between 1990 and 2002, human remains representing a minimum of six individuals were anonymously donated to the Bureau of Land Management, Anasazi Heritage Center. It is inferred that all of the individuals were removed from unknown localities in southwest Colorado. No known individuals were identified. No associated funerary objects are present.

Examination of the human remains indicates that the individuals are Native American. Assuming that the locational information of southwest Colorado is correct, it can be inferred that the individuals date to the Basketmaker III-Pueblo III periods (A.D. 500–1350).

In summary, all the materials listed above are Ancestral Puebloan with a relationship of shared group identity that can be reasonably traced to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; the Pueblo of Zia, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico. This relationship of shared group identity is based on geographical, archeological, anthropological, linguistic, historical, and oral tradition evidence.

Officials of the Bureau of Land Management, Anasazi Heritage Center have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 259 individuals of Native American ancestry. Officials of the Bureau of Land Management, Anasazi Heritage Center also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 272 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management, Anasazi Heritage Center have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; the Pueblo of Zia, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Susan Thomas, Anasazi Heritage Center Curator and NAGPRA Coordinator, Bureau of Land Management, 27501 Highway 184, Dolores, CO 81323, telephone (970) 882–5600 November 12, 2004. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; the Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; the Pueblo of San Juan, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; the Pueblo of Zia, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Bureau of Land Management, Anasazi Heritage Center is responsible for notifying the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico and Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: August 10, 2004.

Sherry Hutt,

Manager, National NAGPRA Program

[FR Doc. 04–22832 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Arizona State Museum, University of Arizona, Tucson, AZ, that meets the definition of ''unassociated funerary object'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The one cultural item is an abalone shell pendant.

During the 1920s, the cultural item was removed from a cemetery area at site C–144 in Mason Valley, San Diego County, CA, during legally authorized excavations conducted by Malcolm Rogers of the San Diego Museum of

Man. The item had previously been removed from its context and cannot be associated with any specific set of human remains. In 1934, the cultural item was sent to the Gila Pueblo Foundation as part of an exchange. In December 1950, the Gila Pueblo Foundation donated the item to the Arizona State Museum.

Based on the mortuary pattern and associated ceramic materials, types of projectile points, and types of shell beads, the cultural item has been dated to the late Prehistoric period to the Historic period (circa A.D. 750–1870). Continuities of material culture and technologies provide a clear continuum for native cultures in this area from the late precontact period into the time of European contact. Historic documents from the Spanish expeditions refer to Diegueno and Kumeyaay peoples living throughout this area. Consultation information provided by the Kumeyaay Cultural Repatriation Committee supports the recognition of this area of San Diego County as an ancestral homeland to the Kumeyaay Indians.

Officials of the Arizona State Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Arizona State Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary object should contact John Madsen, Repatriation Coordinator, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 621–4795, before November 12, 2004. Repatriation of the unassociated funerary object to the Kumeyaay Cultural Repatriation Committee on behalf of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California may proceed after that date if no additional claimants come forward.

The Arizona State Museum is responsible for notifying the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California that this notice has been published.

Dated: August 19, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–22827 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Arizona State Museum, University of Arizona, Tucson, AZ. The human remains and associated funerary objects were removed from an archeological site in Mason Valley, San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Arizona State Museum professional staff in consultation with representatives of the Kumeyaay Cultural Repatriation Committee on behalf of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission

Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

In 1924, human remains representing a minimum of one individual were removed from site C–144 in Mason Valley, San Diego County, CA. The human remains were in a ceramic vessel that was excavated by John Glenn and that was given to the San Diego Museum of Man. In 1934, the vessel and the human remains were sent to the Gila Pueblo Foundation as part of an exchange. In December 1950, the Gila Pueblo Foundation donated the vessel and the human remains to the Arizona State Museum. No known individual was identified. The 11 associated funerary objects consist of one ceramic cremation jar, four sherds of brown pottery, five charred seeds, and one group charred textile fragments.

Based on ceramic material and the mortuary pattern, the human remains have been identified as Native American and date from the late Prehistoric period to the Historic period (circa A.D. 750–1870). Continuities of material culture and technologies provide a clear continuum for native cultures in this area from the late Prehistoric period into the Historic period. Historic documents from Spanish expeditions refer to Diegueno and Kumeyaay peoples living throughout this area. Consultation information provided by the Kumeyaay Cultural Repatriation Committee supports the recognition of this area of San Diego County as ancestral homeland to the Kumeyaay Indians.

Officials of the Arizona State Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Arizona State Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Arizona State Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact John Madsen, Repatriation Coordinator, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 621–4795, before November 12, 2004. Repatriation of the human remains and associated funerary objects to the Kumeyaay Cultural Repatriation Committee on behalf of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California may proceed after that date if no additional claimants come forward.

The Arizona State Museum is responsible for notifying the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California that this notice has been published.

Dated: August 19, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–22836 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: The Catholic University of America, Washington, DC

AGENCY: National Park Service.

ACTION: Notice.

Notice is here given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary object in the possession of the Catholic University of America, Washington, DC. The human remains and associated funerary object were removed from Custer County, MT, and from an unknown location in Wyoming.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary object. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains and associated funerary object was made by the Catholic University of America professional staff in consultation with representatives of the Crow Tribe of Montana and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

At the request of representatives of the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana, the Catholic University of America also consulted with Dr. William Billeck, Repatriation Office, National Museum of Natural History, Smithsonian Institution, Washington, DC.

In 1882, human remains representing four individuals were collected by Father Eli Lindesmith in the vicinity of Fort Keogh, Custer County, MT. Three of the four human remains were collected on August 14, 1882. The exact date of collection of the remains of the fourth individual is unknown. Father Lindesmith served as military chaplain at Fort Keogh from 1880–1891, establishing a mission among the Crow, Sioux, and Cheyenne and serving the local white settlers and military personnel. No known individuals were identified. The one associated funerary object is a wooden burial board.

The human remains of one individual (AN1996–159) were recovered along the north side of the Yellowstone River, ''opposite the company garden.'' The human remains of a second individual (AN1996–197.2) and a wooden burial board (AN1996–197.1-.3) were recovered from beneath a cedar tree in which they had originally been placed to protect the human remains from wolves. Father Lindesmith indicated that these human remains were ''supposed to be a Sioux.'' During consultation, Dr. Billeck observed, ''The wooden board is from a Crow type cradle, and is not a type used by the Sioux or Cheyenne. The association of the skeletal remains under the same tree as the Crow cradle board, suggest that the human remains are Crow.'' The human remains of a third individual (AN1996–260) were recovered from an unknown site within 3 miles of Fort Keogh, MT. The human remains of a fourth individual (AN1996–160) were given to Father Lindesmith and are believed to have been recovered from an unknown site in Wyoming. In a November 9, 1893, letter to the Catholic University of America, Father Lindesmith stated, ''I do not know whether they are Indian skulls or not.'' During consultation, Dr. Billeck observed, ''The three cranial fragments from Wyoming have been identified as human'' and ''show evidence that they were obtained from an individual whose crania had been weathered by surface exposure and not by burial in the ground.''

In 1893, Father Lindesmith donated the four human remains and one associated funerary object to the Catholic University of America. Osteological examination and historical documentation confirms that the human remains are of four Native American individuals. All of the human remains are believed to have been interred during the middle-to late–19th century.

Officials of the Catholic University of America have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of four individuals of Native American ancestry. Officials of the Catholic University of America also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Catholic University of America have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Crow Tribe of Montana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object should contact Timothy J. Meagher, Archivist and Museum Director, The Catholic University of America, Washington, DC 20064, telephone (202) 319–5152, before November 12, 2004. Repatriation of the human remains and associated funerary object to the Crow tribe may proceed after that date if no additional claimants come forward.

The Catholic University of America is responsible for notifying the Crow Tribe of Montana and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana that this notice has been published.

Date: September 1, 2004.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–22833 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Denver Museum of Nature & Science, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Denver Museum of Nature & Science, Denver, CO. The human remains were removed from unspecified area(s) on or near the Rosebud Indian Reservation in South Dakota.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Denver Museum of Nature & Science professional staff in consultation with representatives of the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota.

Between 1895 and 1899, human remains representing an unknown number of individuals were removed from an unspecified area on or near the Rosebud Indian Reservation in South Dakota. The human remains are 16 small fragments of long bones, 5 teeth, part of a mandible, and 2 vertebrae. Jesse H. Bratley obtained the human remains and three pieces of animal bone while teaching at the Lower Cut Meat School on the Rosebud Indian Reservation. Based on museum records, the human remains probably were not removed from a burial context. At Mr. Bratley's death in 1948, the human remains came into the possession of Mr. Bratley's daughter, Hazel Bratley. In 1961, Mary W.A. Crane and Francis V. Crane purchased the human remains from Ms. Bratley. In 1983, the Cranes donated the human remains to the museum as part of the Jesse H. Bratley Collection and the museum accessioned the human remains into the collection in the same year. No known individual(s) was identified. No associated funerary objects are present.

The human remains were probably collected from the ground surface. Museum records, consultation with tribal leaders and elders of the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota, and examination by a physical anthropologist indicate that the human remains are Native American. Based on museum records, physical evidence, and information obtained during consultation, the human remains most likely date from A.D. 1800 to 1890. Mr. Bratley collected directly from the Rosebud Sioux during the time he lived and taught at Lower Cut Meat Creek.

During consultation, tribal officials and elders suggested that the human remains are from the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota.

Between 1895 and 1899, human remains representing the fragmentary and commingled remains of a minimum of three individuals were removed from an unspecified area on or near the Rosebud Indian Reservation in South Dakota. Jesse H. Bratley obtained the human remains sometime while teaching at the Lower Cut Meat School on the Rosebud Indian Reservation. At Mr. Bratley's death in 1948, the human remains came into the possession of Mr. Bratley's daughter, Hazel Bratley. In 1961, Mary W.A. Crane and Francis V. Crane purchased the human remains from Ms. Bratley. In 1983, the Cranes donated the human remains to the museum and the museum accessioned the human remains into the collection in the same year. No known individuals were identified. No associated funerary objects are present.

Morphological evidence suggests scaffold-type burials and staining indicative of copper ornaments. Museum records, consultation with tribal leaders and elders of the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota, and examination by a physical anthropologist indicate that the human remains are Native American. Based on museum records, physical evidence, and information obtained during consultation, the human remains most likely date from A.D. 1800 to 1890. Mr. Bratley collected directly from the Rosebud Sioux during the time he lived and taught at Lower Cut Meat Creek. During consultation, tribal officials and elders suggested that the human remains are from the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota.

Officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001, (9-10), the human remains described above represent the physical remains of at least four individuals of Native American ancestry. Officials of the Denver Museum of Nature & Science also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Ella Maria Ray, NAGPRA Officer, Department of Anthropology, Denver Museum of Nature & Science, 2001 Colorado Boulevard, Denver, CO 80205, telephone (303) 370-6056, before November 12, 2004. Repatriation of the human remains to the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota that this notice has been published.

September 15, 2004.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–22837 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Sacramento District, Sacramento, CA, and UCLA Fowler Museum, University of California, Los Angeles, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Defense, Army Corps of Engineers, Sacramento District, Sacramento, CA (Federal agency that has control of the cultural items), and UCLA Fowler Museum, University of California, Los Angeles, Los Angeles, CA (museum that has physical custody of the cultural items), determined that the physical remains of six individuals of Native American ancestry and five associated funerary objects in the Federal agency's collections, described below in **Information about cultural items**, are culturally affiliated with the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as Santa Rosa Rancheria Tachi Yokut Tribe, California); Table Mountain Rancheria of California; and Tule River Indian Tribe of the Tule River Reservation, California and have a cultural relationship with the Tinoqui-Chalola Council of Kitanemuk and Yowlumne Tejon Indians and the Wukchumni Tribe of Yokut Indians (nonfederally recognized Indian groups).

The National Park Service publishes this notice on behalf of the Federal agency as part of the National Park Service's administrative responsibilities under NAGPRA. The Federal agency is solely responsible for information and determinations stated in this notice. The National Park Service is not responsible for the Federal agency's determinations.

Information about NAGPRA is available online at *http://www.cr.nps.gov/nagpra*.

DATES: Repatriation of the cultural items to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as Santa Rosa Rancheria Tachi Yokut Tribe, California) may proceed after November 12, 2004, if no additional claimants come forward. Representatives of any other Indian tribe that believes itself to be culturally affiliated with the cultural items should contact the Federal agency before November 12, 2004.

SUPPLEMENTARY INFORMATION:

Authority. 25 U.S.C. 3001 *et seq.* and 43 CFR Part 10.

Contact. Contact Richard M. Perry, U.S. Army Corps of Engineers, Sacramento District, 1325 J Street, Sacramento, CA 95814, telephone (916) 557–5218, regarding determinations stated in this notice or to claim the cultural items described in this notice.

Consultation. The Federal agency identified the cultural items and the cultural affiliation of the cultural items in consultation with museum officials and representatives of the Big Sandy Rancheria of Mono Indians of California; Cold Springs Rancheria of Mono Indians of California; Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as Santa Rosa Rancheria Tachi Yokut Tribe, California); Table Mountain Rancheria of California; Tinoqui-Chalola Council of Kitanemuk and Yowlumne Tejon Indians (a nonfederally recognized Indian group); Tule River Indian Tribe of the Tule River Reservation, California; and Wukchumni Tribe of Yokut Indians (a nonfederally recognized Indian group).

Information about cultural items. In 1958, David Pendergast and Clement Meighan of the University of California, Los Angeles, under joint contract with the National Park Service, removed human remains representing a minimum of six individuals from the Greasy Creek site (CA-TUL–1), Tulare County, CA. At the time of removal, the site was on private land.

The site was excavated prior to the construction of the Terminus Dam by

the U.S. Army Corps of Engineers. Human remains representing two individuals were recovered from burials, while human remains representing as many as four individuals were recovered from midden contexts. No known individuals were identified. The five associated funerary objects are three animal bones, one tubular bone bead, and one lithic fragment.

Burial contexts identify the human remains removed from the Greasy Creek site as Native American. According to the cultural resource specialist from the Santa Rosa Rancheria, the site is located within the traditional territory of the Yokut Indians. The associated funerary objects are consistent with Native American burial goods found in the area. Based on site location, the upper levels of the site may be identified with the Wukchumni Yokuts historic site of čoiši šyu (''dog place''). Materials from the upper levels of the site are generally comparable to materials from the nearby village of Slick Rock, which dates to the period prior to contact.

Determinations. Under 25 U.S.C. 3003, Federal agency officials determined that the human remains represent the physical remains of six individuals of Native American ancestry. Federal agency officials determined that the five objects are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Federal agency officials determined that the human remains and associated funerary objects are culturally affiliated or have a cultural relationship with the Indian tribes and groups listed above in **Summary**.

Notification. The Federal agency is responsible for sending copies of this notice to the consulted Indian tribes and groups listed above in **Consultation**.

Dated: August 3, 2004.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–22829 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Anasazi Heritage Center, Dolores, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, Bureau of Land Management, Anasazi Heritage Center, Dolores, CO. The human remains and associated funerary objects were removed from sites in Dolores and Montezuma Counties, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Bureau of Land Management, Anasazi Heritage Center professional staff in consultation with representatives of the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah&Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Reservation, Colorado, New Mexico & Utah; and Zuni Tribe of the Zuni Reservation, New Mexico.

The human remains and associated funerary objects described below were removed from sites in Dolores and Montezuma Counties, CO, as part of cultural resource assessment activities associated with the Dolores Project Cultural Resources Mitigation Program, supervised by the U.S. Department of the Interior, Bureau of Reclamation. The Dolores Project diverted water from the Dolores River for impoundment and irrigation purposes. Physical custody and control of all Dolores Project Cultural Resources Mitigation Program collections were transferred from the Bureau of Reclamation to the Bureau of Land Management Anasazi Heritage Center in 1998 by Interagency Agreement and Transfer of Property form (DI–104).

In 1983, human remains representing a minimum of one individual were removed from site 5DL827, located near the Dolores River, Dolores County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and other types of artifactual evidence, site 5DL827 dates to the Basketmaker III-Pueblo III periods (A.D. 500–1350).

Between 1979 and 1983, human remains representing a minimum of four individuals were removed from site 5MT23, located on the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. The 27 associated funerary objects are 21 partial ceramic vessels, 5 stone tools, and 1 bone tool.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT23 dates to the Pueblo I period (A.D. 750–910).

In 1968, human remains representing a minimum of two individuals were removed from site 5MT1640, located near Hovenweep Canyon, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT1640 dates to the Pueblo II-Pueblo III periods (A.D. 900–1350).

In 1968, human remains representing a minimum of one individual were removed from site 5MT1661, located near Hovenweep Canyon, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT1661 dates to the Pueblo II period (A.D. 900–1150).

In 1978, human remains representing a minimum of two individuals were removed from site 5MT2151, located on the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT2151 dates to the Pueblo I period (A.D. 750–950).

In 1979 and 1980, human remains representing a minimum of one individual were removed from site 5MT2161, located on the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT2161 dates to the Pueblo I period (A.D. 720–900).

In 1980, human remains representing a minimum of one individual were removed from site 5MT2181, located on the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT2181 dates to the Early Pueblo I period (A.D. 780–810).

In 1980 and 1982, human remains representing a minimum of four individuals were removed from site 5MT2182, located on the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. The one associated funerary object is a grooved axe.

On the basis of archeological context, architectural evidence, and ceramic and other types of artifactual evidence, site 5MT2182 dates to the Late Pueblo I-Early Pueblo II periods (A.D. 850–975).

In 1978, human remains representing a minimum of one individual were removed from site 5MT2191, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT2191 dates to the Late Pueblo I-Early Pueblo II periods (A.D. 850–970).

In 1979, human remains representing a minimum of two individuals were removed from site 5MT2192, located on the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, the human remains were interred after site 5MT2192 was abandoned and date to the Late Pueblo I-Early Pueblo II periods (A.D. 850–975).

In 1978, human remains in a multiple burial consisting of a minimum of six individuals were removed from site 5MT2235, located on the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. The 19 associated funerary objects are 18 ceramic vessels and 1 shell pendant.

On the basis of archeological context and ceramic and other types of artifactual evidence, the human remains were interred after site 5MT2235 was abandoned and date to the Late Pueblo II-Early Pueblo III periods (A.D. 1150).

In 1979 and 1981, human remains representing a minimum of one individual were removed from site 5MT2236, located on the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, and tree-ring dates, site 5MT2236 dates to the Pueblo I period (A.D. 760–850).

In 1973, human remains representing a minimum of one individual were removed from site 5MT2278, located near Yellowjacket Canyon, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT2278 dates to the Basketmaker III-Pueblo II periods (A.D. 500–1150).

In 1973, human remains representing a minimum of one individual were removed from site 5MT2301, located near Ruin Canyon, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT2301 dates to the Pueblo II-Pueblo III periods (A.D. 900–1350).

In 1973, human remains representing a minimum of two individuals were removed from site 5MT2316, located near Ruin Canyon, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT2316 dates to the Pueblo I-Pueblo III periods (A.D. 900–1350).

In 1979 and 1983, human remains representing a minimum of two individuals were removed from site 5MT2320, located on House Creek, a tributary of the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. The 68 associated funerary objects are 37 ceramic vessels, 23 stone tools and 8 bone tools. All of the funerary objects are associated with one individual.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, the human remains were buried at two separate times. One burial is dated to the Early Pueblo I period (A.D. 760–850), and the other burial is dated to the Late Pueblo I period (A.D. 850–900).

In 1982, human remains representing a minimum of seven individuals were removed from site 5MT2336, located on the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT2336 dates to the Late Pueblo II-Early Pueblo III period (A.D. 1050–1200).

In 1974, human remains representing a minimum of one individual were removed from site 5MT2349, located near Yellowjacket Canyon, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT2349 dates to the Pueblo I-Pueblo II periods (A.D. 750–1150).

In 1974, human remains representing a minimum of one individual were removed from site 5MT2374, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT2374 dates to the Basketmaker III-Pueblo I periods (A.D. 500–900).

In 1983, human remains representing a minimum of three individuals were removed from site 5MT2378, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. The two associated funerary objects are stone tools, each associated with a different individual.

On the basis of archeological context, architectural evidence, and artifactual evidence, the human remains were interred after site 5MT2378 was abandoned and date to the Pueblo I period (A.D. 750–900).

In 1984, human remains representing a minimum of three individuals were removed from site 5MT2384 by University of Colorado staff during

construction of irrigation canals in Montezuma County, CO. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context and architectural evidence, site 5MT2384 dates to the Pueblo I-Pueblo III periods (A.D. 750–1350).

In 1974, human remains representing a minimum of one individual were removed from site 5MT2482, located near Yellowjacket Canyon, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT2482 dates to the Pueblo I-Pueblo II periods (A.D. 750–1150).

In 1974, human remains representing a minimum of one individual were removed from site 5MT2516, located near Ruin Canyon, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT2516 dates to the Pueblo II-Early Pueblo III periods (A.D. 900–1200).

In 1975, human remains representing a minimum of one individual were removed from site 5MT2663, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT2663 dates to the Basketmaker III-Pueblo I periods (A.D. 500–900).

In 1975, human remains representing a minimum of one individual were removed from site 5MT2683, located near Hartman Draw, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT2683 dates to the Pueblo II period (A.D. 900–1150).

From 1979 to 1981, human remains representing a minimum of one individual were removed from site 5MT2848, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, tree-ring dates, ceramic evidence, and other types of artifactual evidence, site 5MT2848 dates to the Early Pueblo I period (A.D. 760–850).

In 1979, human remains representing a minimum of one individual were removed from site 5MT2853, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, and archeomagnetic dates, site 5MT2853 dates to the Late Basketmaker III-Pueblo I periods (A.D. 600–900).

In 1979 and 1980, human remains representing a minimum of one individual were removed from site 5MT2854, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT2854 dates to the Basketmaker III-Pueblo I period (A.D. 600–850).

In 1979, human remains representing a minimum of two individuals were removed from site 5MT2858, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, archaeomagnetic dates, ceramic evidence, and other types of artifactual evidence, site 5MT2858 dates to the Basketmaker III-Pueblo I periods (A.D. 635–800).

In 1978, human remains representing a minimum of one individual were removed from site 5MT4449, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT4449 dates to the Pueblo II period (A.D. 900–1150).

In 1978, human remains representing a minimum of one individual were removed from site 5MT4450, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT4450 dates to the Basketmaker III-Pueblo II periods (A.D. 500–1150).

In 1978, 1980, 1982, and 1984, human remains representing a minimum of 15 individuals were removed from site 5MT4475 near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. The 11 associated funerary objects are 6 stone tools, 2 shell bracelets, 2 ceramic vessels, and 1 turquoise pendant.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, the human remains date to the Late Pueblo I-Early Pueblo II periods (A.D. 850–975).

In 1980 and 1982, human remains representing a minimum of three individuals were removed from site 5MT4477, located on the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, the human remains date to the Late Pueblo I-Early Pueblo II periods (A.D. 850–975).

In 1980, human remains representing a minimum of two individuals were removed from site 5MT4479, located on the Dolores River, Montezuma County, CO, by University of Colorado staff. No know individuals were identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, archaeomagnetic dates, ceramic evidence, and other types of artifactual evidence, site 5MT4479 dates to the Late Pueblo I period (A.D. 850–890).

In 1980 and 1982, human remains representing a minimum of three individuals were removed from site 5MT4480, located on the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT4480 dates to the Late Pueblo I period (A.D. 850–900).

In 1979, human remains representing a minimum of two individuals were removed from site 5MT4545, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. The 177 associated funerary objects are 172 shell beads, 2 stone tools, 2 ceramic vessels, and 1 bone tool.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT4545 dates to the Late Basketmaker

III-Early Pueblo I periods (A.D. 600–850).

In 1978, human remains representing a minimum of two individuals were removed from site 5MT4638, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT4638 dates to the Basketmaker III-Pueblo III periods (A.D. 500–1350).

In 1981 and 1982, human remains representing a minimum of three individuals were removed from site 5MT4654, on the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT4654 dates to the Pueblo II period (A.D. 900–1150).

In 1979 and 1980, human remains representing a minimum of six individuals were removed from site 5MT4671, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT4671 dates to the Pueblo I period (A.D. 800–850).

In 1981, 1982, and 1983, human remains representing a minimum of one individual was removed from site 5MT4683, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT4683 dates to the Pueblo I-Pueblo III periods (A.D. 750–1350).

In 1980, human remains representing a minimum of eight individuals were removed from site 5MT4684, located on the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT4684 dates to the Basketmaker III period (A.D. 650–700).

In 1980, human remains representing a minimum of five individuals were removed from site 5MT4725, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. The five associated funerary objects are five pieces of unworked animal bone.

On the basis of archeological context, architectural evidence, tree-ring dates, ceramic evidence, and other types of artifactual evidence, site 5MT4725 dates to the Pueblo I period (A.D. 750–900).

In 1979, human remains representing a minimum of one individual were removed from site 5MT4748, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural evidence, ceramic, and other types of artifactual evidence, site 5MT4748 dates to the Pueblo II period (A.D. 900–1150).

In 1982, human remains representing a minimum of one individual were removed from site 5MT4751, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT4751 dates to the Pueblo II period (A.D. 1050–1125).

In 1981, human remains representing a minimum of five individuals were removed from site 5MT5106, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. The 38 associated funerary objects are bone gaming pieces.

On the basis of archeological context, architectural evidence, archeomagnetic and tree-ring dates, ceramic evidence, and other types of artifactual evidence, the human remains date to the Late Pueblo I period (A.D. 850–900).

In 1981, human remains representing a minimum of 24 individuals were removed from site 5MT5107, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. The 21 associated funerary objects are 17 pottery sherds, 3 stone tools, and 1 bone tool.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT5107 dates to the Pueblo I period (A.D. 730–880).

In 1981, human remains representing a minimum of four individuals were removed from site 5MT5108, located on the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individuals were identified. The 10 associated funerary objects are 5 bone tools, 4 ceramic vessels, and 1 stone tool.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT5108 dates to the Late Pueblo I period (A.D. 850–900).

In 1980, human remains representing a minimum of one individual were removed from site 5MT5383, located on the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, ceramic evidence, and other types of artifactual evidence, site 5MT5383 dates to the Pueblo I period (A.D. 750–900).

In 1981, human remains representing a minimum of one individual were removed from site 5MT5863, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural evidence, tree-ring dates, ceramic evidence, and other types of artifactual evidence, site 5MT5863 dates to the Pueblo I period (A.D. 790–910).

In 1981, human remains representing a minimum of one individual were removed from site 5MT5956, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT5956 dates to the Basketmaker III-Pueblo I periods (A.D. 500–900).

In 1981, human remains representing a minimum of one individual were removed from site 5MT5985, on the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, architectural, ceramic, and other types of artifactual evidence, site 5MT5985 dates to the Basketmaker III-Early Pueblo I periods (A.D. 500–850).

In 1979, human remains representing a minimum of one individual were removed from site 5MT6474, located near the Dolores River, Montezuma County, CO, by University of Colorado staff. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context, site 5MT6474 dates to the Basketmaker III-Pueblo III periods (A.D. 500–1350).

In 1985, human remains representing a minimum of one individual were removed from Aulston Pueblo (site 5MT2433), located near Yellowjacket Canyon, Montezuma County, CO, by Complete Archaeological Service Associates during construction of the Fairview Laterals, an irrigation feature associated with the Dolores Project. No known individual was identified. The four associated funerary objects are stone tools.

On the basis of archeological context, architectural evidence, tree-ring dates, ceramic evidence, and other types of artifactual evidence, Aulston Pueblo dates to the Pueblo II period (A.D. 900–1150).

In 1986, human remains representing a minimum of one individual were removed from site 5MT8827, located near Ruin Canyon, Montezuma County, CO, by Complete Archaeological Service Associates during construction of the South Canal, an irrigation feature associated with the Dolores Project. No known individual was identified. The one associated funerary object is a ceramic pitcher.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT8827 dates to the Pueblo II period (A.D. 900–1150).

In 1988, human remains representing a minimum of three individuals were removed from Herren House (site 5MT2519), located near Ruin Canyon, Montezuma County, CO, by Complete Archaeological Service Associates during construction of the Hovenweep Laterals, an irrigation feature associated with the Dolores Project. No known individuals were identified. The 16 associated funerary objects include 7 pottery sherds, 4 ceramic vessels, 3 stone tools, and 2 bone tools.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, Herren House is a multi-component occupation in which the human remains date to the Late Pueblo II-Early Pueblo III periods (A.D. 1080–1200).

In 1988, human remains representing a minimum of two individuals were removed from 5MT2525, located near Ruin Canyon, Montezuma County, CO, by Complete Archaeological Service Associates during construction of the Hovenweep Laterals, an irrigation feature associated with the Dolores Project. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT2525 is a multi-component occupation in which the human remains date to the Pueblo III period (A.D. 1150–1220).

In 1988, human remains representing a minimum of two individuals were removed from site 5MT2544, located near Ruin Canyon, Montezuma County, CO, by Complete Archaeological Service Associates during construction of the Hovenweep Laterals, an irrigation feature associated with the Dolores Project. No known individuals were identified. The 13 associated funerary objects include 8 ceramic vessels, 3 stone tools, and 2 bone tools.

On the basis of archeological context, tree-ring dates, architectural evidence, ceramic evidence, and other types of artifactual evidence, site 5MT2544 dates to the Pueblo II-Pueblo III periods (A.D. 1025–1200).

In 1989, human remains representing a minimum of four individuals were removed from site 5MT8899, located near McElmo Creek, Montezuma County, CO, by Complete Archaeological Service Associates during construction of Reach I of the Towaoc, an irrigation feature associated with the Dolores Project. No known individuals were identified. The 19 associated funerary objects are 8 stone tools, 6 pottery sherds, 4 pollen samples, and 1 ceramic vessel.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT8899 was occupied in two different time periods. The first occupation dates to the Basketmaker III period (A.D. 500–750), and the second dates to the Pueblo II period (A.D. 900–1150).

In 1989, human remains representing a minimum of three individuals were removed from site 5MT8934, located near Ritter Draw, Montezuma County, CO, by Complete Archaeological Service Associates during construction of Reach I of the Towaoc, an irrigation feature associated with the Dolores Project. No known individuals were identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT8934 dates to the Pueblo I-Pueblo II periods (A.D. 750–1150).

In 1989, human remains representing a minimum of one individual were removed from site 5MT8937, located near McElmo Creek, Montezuma County, CO, by Complete Archaeological Service Associates during construction of Reach II of the Towaoc, an irrigation feature associated with the Dolores Project. No known individual was identified. No associated funerary objects are present.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT8937 dates to the Late Basketmaker III-Early Pueblo I periods (A.D. 700–775).

In 1989, human remains representing a minimum of two individuals were removed from site 5MT9072, located near McElmo Creek, Montezuma County, CO, by Complete Archaeological Service Associates during construction of Reach II of the Towaoc, an irrigation feature associated with the Dolores Project. No known individuals were identified. The seven associated funerary objects are three miscellaneous vegetal items, two stone tools, one pottery sherd, and one shell bead.

On the basis of archeological context and architectural, ceramic, and other types of artifactual evidence, site 5MT9072 dates to the Late Basketmaker III-Early Pueblo I periods (A.D. 700–775).

In 1992, human remains representing a minimum of one individual were removed from site 5MT11503, located near McElmo Creek, Montezuma County, CO, by Complete Archaeological Service Associates during construction of Reach II of the Towaoc, an irrigation feature associated with the Dolores Project. No known individual was identified. The five associated funerary objects are three ceramic vessels, one stone tool, and one bone tool.

On the basis of archeological context, ceramic evidence, and other types of artifactual evidence, site 5MT11503 dates to the Pueblo II period (A.D. 900–1150).

In summary, all of the human remains and associated funerary objects described above are Ancestral Puebloan with a relationship of shared group identity that can be reasonably traced to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; the Pueblo of Zia, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico. This relationship of shared group identity is based on geographical, archeological, anthropological, linguistic, historical, and oral tradition evidence.

Officials of the Bureau of Land Management, Anasazi Heritage Center have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 168 individuals of Native American ancestry. Officials of the Bureau of Land Management Anasazi Heritage Center also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 444 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management Anasazi Heritage Center have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Susan Thomas, Anasazi Heritage Center Curator and NAGPRA Coordinator, Bureau of Land Management, 27501 Highway 184, Dolores, CO 81323, telephone (970) 882–5600 November 12, 2004. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Bureau of Land Management, Anasazi Heritage Center is responsible for notifying the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Reservation, Colorado, New Mexico & Utah; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: August 9, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–22825 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate: Louisiana Department of Culture, Recreation, and Tourism, Division of Archaeology, Baton Rouge, LA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Louisiana Department of Culture, Recreation, and Tourism, Division of Archaeology, Baton Rouge, LA, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the title of the notice published in the **Federal Register** on March 25, 2002 (FR Doc 02–7009, page 13651–13652).

The title of the March 25, 2002, notice is corrected by substituting ''Notice of Intent to Repatriate Cultural Items: Louisiana Department of Culture, Recreation, and Tourism, Division of Archaeology, Baton Rouge, LA'' for ''Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Louisiana Department of Culture, Recreation, and Tourism, Division of Archaeology, Baton Rouge, LA.''

Dated: August 26, 2004.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–22830 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Santa Fe National Forest, Santa Fe, NM, and Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of Agriculture, Forest Service, Santa Fe National Forest, Santa Fe, NM, and in the physical custody of the Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM. The human remains and associated funerary objects were removed from site LA 38962, Sandoval County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by U.S. Department of Agriculture, Forest Service, Santa Fe National Forest and Maxwell Museum of Anthropology professional staff in consultation with representatives of the Pueblo of Jemez, New Mexico and Pueblo of Zia, New Mexico.

Between 1939 and 1949, human remains representing four individuals were removed from site LA 38962

during legally authorized excavations undertaken by the University of New Mexico Archeological Field School. Site LA 38962 is located in the Jemez Ranger District, Santa Fe National Forest, Sandoval County, NM. No known individuals were identified. The 12 associated funerary objects are 10 pottery sherds, 1 piece of wood, and 1 piece of animal bone.

Site LA 38962 has been identified as an Anasazi habitation site (A.D. 1300–1600) based on ceramics, architecture, and site organization. Continuities of ethnographic materials, technology, and architecture indicate affiliation of this site with the present-day Pueblo of Jemez. Oral traditions of the Pueblo of Jemez support affiliation with the Anasazi sites in this area of north-central New Mexico.

Officials of the U.S. Department of Agriculture, Forest Service, Santa Fe National Forest have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of four individuals of Native American ancestry. Officials of the U.S. Department of Agriculture, Forest Service, Santa Fe National Forest also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 12 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Department of Agriculture, Forest Service, Santa Fe National Forest have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Pueblo of Jemez, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, U.S. Department of Agriculture, Forest Service, 333 Broadway Boulevard, SE, Albuquerque, NM 87102, telephone (505) 842–3238, FAX (505) 842–3165, before November 12, 2004. Repatriation of the human remains and associated funerary objects to the Pueblo of Jemez, New Mexico may proceed after that date if no additional claimants come forward.

The U.S. Department of Agriculture, Forest Service, Santa Fe National Forest is responsible for notifying the Pueblo of Jemez, New Mexico and the Pueblo of Zia, New Mexico that this notice has been published.

Dated: August 24, 2004.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–22823 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–50–U

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Oregon State University, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA), the Oregon State University, Corvallis, OR (museum that has control of the cultural items), determined that the physical remains of 28 individuals of Native American ancestry in the museum's collections, described below in **Information about cultural items**, are culturally affiliated with the Confederated Tribes of the Grand Ronde Community of Oregon.

The National Park Service publishes this notice on behalf of the museum as part of the National Park Service's administrative responsibilities under NAGPRA. The museum is solely responsible for information and determinations stated in this notice. The National Park Service is not responsible for the museum's determinations.

Information about NAGPRA is available online at www.cr.nps.gov/nagpra.

DATES: Repatriation of the cultural items to the Indian tribe listed above in Summary may proceed after November 12, 2004, if no additional claimants come forward. Representatives of any other Indian tribe that believes itself to be culturally affiliated with the cultural items should contact the museum before November 12, 2004.

SUPPLEMENTARY INFORMATION:

Authority. 25 U.S.C. 3001 *et seq.* and 43 CFR Part 10.

Contact Contact Orcilia Zuniga-Forbes, Vice President for University Advancement, Oregon State University, 634 Kerr Administration Building, Corvallis, OR 97331, telephone (541) 737–4875, regarding determinations stated in this notice or to claim the cultural items described in this notice.

Consultation. The museum identified the cultural items and the cultural affiliation of the cultural items in consultation with representatives of the Confederated Tribes of the Grand Ronde Community of Oregon and Confederated Tribes of the Siletz Reservation, Oregon.

Information about cultural items. Between 1860 and 1919, Dr. J.L. Hill or another individual removed human remains representing a minimum of 13 individuals from the Calapooia Mounds site, Linn County, OR. A published source states that Dr. Hill worked at the Calapooia Mounds site in 1883, but it is not clear whether Dr. Hill removed the 13 individuals from the Calapooia Mounds site at that time. No other provenance documentation is available. The status of the land at the time of removal is unknown. No known individual was identified. No associated funerary objects are present.

Between 1860 and 1919, Dr. Hill, J.G. Crawford, or another individual removed human remains representing a minimum of 15 individuals from the Tangent and/or Calapooia Mounds sites, Linn County, OR. A 1930 document lists J.G. Crawford as an original donor along with Dr. Hill. The museum does not have information about how Dr. Hill or Mr. Crawford acquired the human remains. The only provenance documentation available is a label on a rib, which says ''From Tangent Mound,'' and a partial label on a femur, which says ''mound.'' The status of the land at the time of removal is unknown. No known individual was identified. No associated funerary objects are present.

The human remains are part of the Dr. J.L. Hill collection. The Museum of Oregon Country, Oregon Agricultural College acquired the collection from Dr. Hill's son and daughter in 1925. The Museum of Oregon Country was renamed the John B. Horner Museum of the Oregon Country in 1936, and became commonly known as the Horner Museum. The Oregon Agricultural College was renamed the Oregon State College in 1937, and became Oregon State University in 1962. The Horner Museum closed in 1995. Currently, cultural items from the Horner Museum are referred to as the Horner Collection, which is owned by, and in the possession of, Oregon State University.

The Confederated Tribes of the Grand Ronde Community of Oregon is made up of tribes from throughout western Oregon, which were later located on the Grand Ronde Reservation. The ceded lands for the Confederated Tribes of the Grand Ronde Community of Oregon encompass the Tangent and the Calapooia Mounds sites.

Determinations. Under 25 U.S.C. 3003, museum officials determined that the human remains represent the physical remains of 28 individuals of Native American ancestry. Museum officials determined that the human

remains are culturally affiliated with the Indian tribe listed above in **Summary**.

Notification. The museum is responsible for sending copies of this notice to the Indian tribe listed above in **Consultation**.

Dated: August 16, 2004.

Sherry Hutt,

Manager, National NAGPRA Program

[FR Doc. 04–22828 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains and associated funerary objects were removed from Humboldt County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

An assessment of the human remains, and catalog records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Bear River Band of the Rohnerville Rancheria, California; Blue Lake Rancheria, California; and Table Bluff Reservation-Wiyot Tribe, California.

During the 1920s, human remains representing at least five individuals were removed from site CA-Hum-33, Humboldt County, CA, by H.H. Stuart, who donated the human remains to the Phoebe Hearst Museum during the 1930s. No known individuals were identified. No associated funerary objects are present.

Site CA-Hum-33 is located near Mad River Slough. Mr. Stuart reported that glass beads and metal objects were found at the site, indicating that the occupation of the site post-dates Euroamerican contact.

At an unknown time prior to 1902, human remains representing at least one individual were removed from site CA-Hum-67, Indian Island (formerly known as Gunther's Island), Humboldt County, CA, by an unknown individual. In 1905, the human remains were donated to the Phoebe A. Hearst Museum by Mr. Gunther. No known individuals were identified. No associated funerary objects are present.

In 1913, human remains representing at least 24 individuals were removed from CA-Hum-67, Humboldt County, CA, by L.L. Loud, an archeologist in the employ of the Phoebe A. Hearst Museum. No known individuals were identified. The 366 associated funerary objects are 4 mauls; 1 maul fragment; 4 adze handle fragments; 6 flint knives; 8 flint knife fragments; 10 flint points; 9 flint point fragments; 3 flint drills; 37 flint and quartz flakes and 2 lots of uncounted flakes; 4 olivella beads and 3 lots of uncounted beads; 2 dentalium bead fragments and 2 lots of uncounted beads; 7 lots of uncounted pine nut beads; 3 lots of vibernum beads; 5 shell pendants; 2 stone pipes; 10 obsidian knives; 9 obsidian knife fragments; 23 obsidian points; 5 obsidian point fragments; 1 obsidian drill; 3 obsidian flakes; 12 stone sinkers; 4 sinker fragments; 27 stone pestles; 2 pestle fragments; 1 hammerstone; 8 stones; 3 serpentine clubs; 3 bone pendant fragments; 5 bone tool fragments; 1 bone bead; 7 complete or fragmentary chisels or gouges; 3 mammal bones; 22 bone whistle fragments; 1 fish bone; 2 lots of abalone fragments; 4 lots of marine shell fragments; 1 lot of basketry fragments; 1 lot of organic material; 1 lot of vegetal fiber; 1 lot of floor fragments; 4 charcoal samples; 82 clay balls and 3 lots of clay ball fragments; 1 clay pipe fragment; 1 crab claw; and 1 stone bowl fragment.

Stylistic attributes of material culture found at site Ca-Hum-67 indicate that the site was occupied after A.D. 900.

At an unknown date, human remains representing at least two individuals were removed from CA-Hum-112, Humboldt County, CA, by H.H. Stuart. Mr. Stuart donated the human remains to the Phoebe A. Hearst Museum in the 1930s. No known individuals were identified. The one associated funerary object is fused glass beads.

In 1953, human remains representing at least one individual were removed from CA-Hum-112, Humboldt County, CA, by University of California Archaeology Survey staff James Bennyhoff and Albert Elsasser during excavations conducted following looting of the site. No known individual was identified. The 11 associated funerary objects are 9 lots of glass trade beads, 1 piece of flaked bottle glass, and 1 piece of wood from a coffin.

The circumstances of burial indicate that the human remains described above are Native American in origin. Oral history and continuities in material culture traits indicate that the Wiyot have lived in the vicinity of Humboldt and Arcata Bays, an area that includes the locations of sites CA-Hum-33, CA-Hum-67, and CA-Hum-112, for at least 600 years, pre-dating occupation of the sites. This evidence indicates that sites CA-Hum-33, CA-Hum-67, and CA-Hum-112 were occupied by Wiyot people. The modern-day representatives of the Wiyot are Table Bluff Reservation-Wiyot Tribe, California; and the Blue Lake Rancheria, California. Wiyot desendents also live in the Bear River Band of the Rohnerville Rancheria, California.

Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of at least 33 individuals of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 378 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Bear River Band of the Rohnerville Rancheria, California; Blue Lake Rancheria, California; and Table Bluff Reservation-Wiyot Tribe, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720, telephone (510) 642-6096, before November 12, 2004. Repatriation of the human remains and associated funerary objects to the Bear River Band of the Rohnerville Rancheria, California; Blue Lake Rancheria, California; and Table

Bluff Reservation-Wiyot Tribe, California may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Bear River Band of the Rohnerville Rancheria, California; Blue Lake Rancheria, California; and Table Bluff Reservation-Wiyot Tribe, California that this notice has been published.

Dated: September 15, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–22826 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains and associated funerary objects were removed from Riverside County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

An assessment of the human remains, and catalog records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Augustine Band of the Cahuilla Mission Indians of the Augustine Reservation, California; Cabazon Band of Mission Indians, California; Cahuilla Band of Mission Indians of the Cahuilla Reservation, California; Los Coyotes Band of the Cahuilla & Cupeno Indians of the Los Coyotes Reservation, California; Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California; Ramona Band or Village of Cahuilla Mission Indians of California; Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California; and Torres-Martinez Band of Cahuilla Mission Indians of California.

In 1948, human remains representing the cremated remains of at least one individual were removed from site CA-Riv-9, a village site located 2 miles west of Valerie, Riverside County, CA, by University of California employee Clement W. Meighan. Site CA-Riv-9 is a village settlement in the Coachella Valley, north of the Salton Sea. No known individual was identified. The 128 associated funerary objects are 20 olivella shells, 1 olivella bead, 2 clamshell pendants, 1 bone scraper, 4 projectile points, and 100 ceramic sherds.

Stylistic characteristics of the ceramics associated with the cremation date the occupation to A.D. 1300–1700.

The use of cremation as part of the mortuary ritual, and the nature of the associated funerary objects indicate that the human remains are of Native American origin. Oral history describes the area north of the Salton Sea as part of the traditional lands of Cahuilla speakers, which is corroborated by linguistic evidence that Cahuilla speakers moved into the region after A.D. 1000. It is most likely that site CA-Riv-9 was occupied by Cahuilla speakers. The modern-day descendants of the Cahuilla are the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Augustine Band of the Cahuilla Mission Indians of the Augustine Reservation, California; Cabazon Band of Mission Indians, California; Cahuilla Band of Mission Indians of the Cahuilla Reservation, California; Los Coyotes Band of the Cahuilla & Cupeno Indians of the Los Coyotes Reservation, California; Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California; Ramona Band or Village of Cahuilla Mission Indians of California; Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California; and Torres-Martinez Band of Cahuilla Mission Indians of California

Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least one individual of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 128 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Augustine Band of the Cahuilla Mission Indians of the Augustine Reservation, California; Cabazon Band of Mission Indians, California; Cahuilla Band of Mission Indians of the Cahuilla Reservation, California; Los Coyotes Band of the Cahuilla & Cupeno Indians of the Los Coyotes Reservation, California; Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California; Ramona Band or Village of Cahuilla Mission Indians of California; Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California; and Torres-Martinez Band of Cahuilla Mission Indians of California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720, telephone (510) 642-6096, before November 12, 2004. Repatriation of the human remains and associated funerary objects to the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Augustine Band of the Cahuilla Mission Indians of the Augustine Reservation, California; Cabazon Band of Mission Indians, California; Cahuilla Band of Mission Indians of the Cahuilla Reservation, California; Los Coyotes Band of the Cahuilla & Cupeno Indians of the Los Coyotes Reservation, California; Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California; Ramona Band or Village of Cahuilla Mission Indians of California; Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California; and Torres-Martinez Band of Cahuilla Mission Indians of California may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for

notifying the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Augustine Band of the Cahuilla Mission Indians of the Augustine Reservation, California; Cabazon Band of Mission Indians, California; Cahuilla Band of Mission Indians of the Cahuilla Reservation, California; Los Coyotes Band of the Cahuilla & Cupeno Indians of the Los Coyotes Reservation, California; Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California; Ramona Band or Village of Cahuilla Mission Indians of California; Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California; and Torres-Martinez Band of Cahuilla Mission Indians of California that this notice has been published.

Dated: September 15, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–22838 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Hawai'i at Hilo, Hilo, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Department of Anthropology, University Hawai'i at Hilo, Hilo, HI. The human remains were removed from three locations on Hawai'i Island, HI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of Hawai'i at Hilo professional staff in consultation with representatives of the Hawaii Island Burial Council, Department of Hawaiian Homelands, Office of Hawaiian Affairs, Hui Malama Ola Na 'Oiwi, Hawaiian Civic Club of Ka'u, Ka 'Ohana Punalu'u, and the Punalu'u Preservation Association.

In 1954, human remains representing a minimum of one individual were removed from Keanapuhi'ula Cave, or ''Kawena's Cave'' (site H13), Kaunamano ahupua'a, Ka'u District, Hawai'i Island, HI, as part of joint excavation projects in the Ka'u area by the University of Hawai'i at Hilo and the Bernice P. Bishop Museum, HI. No known individual was identified. No associated funerary objects are present.

The burial is a secondary burial. Secondary burial in caves was a common form of Native Hawaiian burial prior to European contact, and was not generally practiced by historic immigrant communities in the Hawaiian Islands.

At an unknown time during the 1950s, human remains representing a minimum of one individual were removed from the Pu'u Ali'i Sand Dune Site (site H1), Kamau'oa Pu'u'eo ahupua'a, Ka'u District, Hawai'i Island, HI, under the direction of Professor William Bonk at the University of Hawai'i at Hilo. No known individual was identified. No associated funerary objects are present.

The Pu'u Ali'i Sand Dune site is a Native Hawaiian fishing village dating to A.D. 1250–1350. The cemetery dates to pre-European contact.

All other known human remains removed from the site and formerly stored at University of Hawai'i at Hilo were repatriated through the Hawai'i State Historic Preservation Division to Ka 'Ohana o Ka Lae before the passage of NAGPRA.

In 1975, human remains representing a minimum of one individual were removed from the Mahana Bay IV site, Kamau'oa Pu'u'eo ahupua'a, Ka'u District, Hawai'i Island, HI, as part of long-term excavations conducted between 1973 and 1977 under the direction of Professor William Bonk at the University of Hawai'i at Hilo. No known individual was identified. No associated funerary objects are present.

The Mahana Bay area is well documented as a Native Hawaiian fishing community from the prehistoric era through much of the historical era.

Officials of the University of Hawai'i at Hilo have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of three individuals of Native Hawaiian ancestry. Officials of the University of Hawai'i at Hilo also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native Hawaiian human remains and the Punalu'u Preservation Association and the Office of Hawaiian Affairs.

Representatives of any other Native Hawaiian Organization or Indian tribe that believes itself to be culturally affiliated with the human remains should contact Peter R. Mills, Department of Anthropology, Social Sciences Division, University of Hawai'i at Hilo, 200 West Kawili Street, Hilo, HI 96720–4091, telephone (808) 974–7465, before November 12, 2004. Repatriation of the human remains jointly to the Punalu'u Preservation Association and the Office of Hawaiian Affairs may proceed after that date if no additional claimants come forward.

The University of Hawai'i at Hilo is responsible for notifying the Hawai'i Island Burial Council, Department of Hawaiian Homelands, Office of Hawaiian Affairs, Hui Malama Ola Na 'Oiwi, Hawaiian Civic Club of Ka'u, and Ka 'Ohana Punalu'u that this notice has been published.

Dated: September 1, 2004.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–22834 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Utah State Office, Salt Lake City, UT, and Southern Utah University, Cedar City, UT

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of the Interior, Bureau of Land Management, Utah State Office, Salt Lake City, UT, and in the physical custody of Southern Utah University, Cedar City, UT. The human remains and associated funerary objects were removed from six locations on Federal land managed by the Bureau of Land Management in Kane and Washington Counties in southwestern Utah.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native

American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Bureau of Land Management professional staff and by Southern Utah University repository professional staff in consultation with representatives of the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Hopi Tribe of Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Navajo Nation, Arizona, New Mexico & Utah; Northwestern Band of Shoshoni Nation of Utah (Washakie); Paiute Indian Tribe of Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Juan Southern Paiute Tribe of Arizona; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Te-Moak Tribe of Western Shoshone Indians of Nevada; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1983, human remains representing a minimum of one individual were removed from site 42Ws392 during legally authorized data recovery efforts as part of the Quail Creek Mitigation Project, Washington County, UT. No known individual was identified. No associated funerary objects are present.

Based on ceramic and architectural styles, site organization, and other archeological information, site 42Ws392 has been identified as a multi-component Pueblo I and late Pueblo II period occupation site. The site has been assigned to the archeologically defined culture known as Virgin Anasazi, a specific regional manifestation of Puebloan culture.

In 1989, human remains representing a minimum of two individuals were removed from site 42Ws881, Little Creek Mesa, Washington County, UT, during legally authorized archeological excavations undertaken by the Southern Utah University Field School. No known individuals were identified. The 408 associated funerary objects are 1 complete ceramic vessel, 7 ceramic sherds, and 400 stone beads.

Based on ceramic and architectural styles, site organization, and other archeological information, site 42Ws881 is an Ancestral Puebloan site. The site has been assigned to the archeologically defined culture known as Virgin Anasazi, a specific regional manifestation of Puebloan culture.

In 1985 and 1988, human remains representing a minimum of four individuals were removed from site 42Ws920, Little Creek Mesa, Washington County, UT, during legally authorized archeological excavations undertaken by the Southern Utah University Field School. No known individuals were identified. The 494 associated funerary objects are 6 ceramic vessels, 2 ceramic bowls, 2 ceramic disks, 1 sandstone disk, 1 polishing stone, 3 projectile points, 2 biface tools, 2 stone drills, 1 stone knife, 2 bone awls, 1 shell artifact, 1 modified bone object, 97 lithic flakes, 1 ceramic scoop, 1 ceramic pipe fragment, and 371 ceramic sherds.

Based on ceramic and architectural styles, site organization, and other archeological information, 42Ws920 is a large, multi-component habitation site with prehistoric occupations ranging from Basketmaker III through late Pueblo II-Pueblo III periods (circa A.D. 400–800). The site has been assigned to the archeologically defined culture known as Virgin Anasazi, a specific regional manifestation of Puebloan culture.

In 1979, human remains representing a minimum of two individuals were removed from site 42Ws969 Washington County, UT, during legally authorized excavations undertaken by the Southern Utah University Field School. No known individuals were identified. The four associated funerary objects are one complete ceramic vessel, one complete ceramic jar, and two broken ceramic bowls.

Based on ceramic styles, site organization, and other available archeological information, 42Ws969 is a late Pueblo II site, dating to post-A.D. 1050. The site has been assigned to the archeologically defined culture known as Virgin Anasazi, a specific regional manifestation of Puebloan culture.

In 1985, human remains representing a minimum of one individual were recovered from site 42Ws1712 during legally authorized excavations by Bureau of Land Management archeologists that were part of data recovery prior to a land exchange in the vicinity of South Creek, Washington County, UT. No known individual was identified. No associated funerary objects are present.

Based on site organization, artifact styles, and other available archeological information, the burial dates to the early Pueblo II period (A.D. 900–1050), and has been assigned to the archeologically defined culture known as Virgin Anasazi, a specific regional manifestation of Puebloan culture.

In 1984, human remains representing a minimum of one individual were recovered from site 42Ka2664, Kitchen Corral Wash, Kane County, UT, by Bureau of Land Management archeologists. No known individual was identified. The 32 associated funerary objects are 1 ceramic jar, 1 ceramic pot, 1 ceramic bowl, 1 ceramic scoop, 1 bone awl, and 27 ceramic sherds.

Based on ceramic styles, site organization, and other available archeological information, site 42Ka2664 was occupied during late Pueblo II and Pueblo III periods (A.D. 1000–1200), and has been assigned to the archeologically defined culture known as Virgin Anasazi, a specific regional manifestation of Puebloan culture.

Oral traditions and oral histories presented by representatives of the Hopi Tribe of Arizona support affiliation with Puebloan sites in southwestern Utah in general and specifically with Virgin Anasazi sites, a specific regional manifestation of Puebloan archeology. The Virgin Anasazi sites of 42Ws392, 42Ws881, 42Ws920, 42Ws969, 42Ws1712, and 42Ka2664 are associated with the present-day Hopi Tribe of Arizona through continuities of styles of prehistoric material culture through time to historic ethnographic objects, and through technological and architectural continuities.

Officials of the U.S. Department of the Interior, Bureau of Land Management, Utah State Office have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 11 individuals of Native American ancestry. Officials of the U.S. Department of the Interior, Bureau of Land Management, Utah State Office also have determined that, pursuant to

25 U.S.C. 3001 (3)(A), the 938 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Department of the Interior, Bureau of Land Management, Utah State Office have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Garth Portillo, Bureau of Land Management, Utah State Office, Post Office Box 45155, 324 South State Street, Suite 301, Salt Lake City, UT 84145–0155, telephone (801) 539–4276, before November 12, 2004. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona may proceed after that date if no additional claimants come forward.

The U.S. Department of the Interior, Bureau of Land Management, Utah State Office is responsible for notifying the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Hopi Tribe of Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Navajo Nation, Arizona, New Mexico & Utah; Northwestern Band of Shoshoni Nation of Utah (Washakie); Paiute Indian Tribe of Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Juan Southern Paiute Tribe of Arizona; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Te-Moak Tribe of Western Shoshone Indians of Nevada; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: September 1, 2004.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–22835 Filed 10–8–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI).

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is responsible for reviewing policy issues, uniform crime reports, and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, make appropriate recommendations to the FBI Director. The programs administered by the FBI CJIS Division are: the Integrated Automated Fingerprint Identification System, the Interstate Identification Index, Law Enforcement Online, National Crime Information Center, the National Instant Criminal Background Check System, the National Incident-Based Reporting System, Law Enforcement National Data Exchange, and Uniform Crime Reporting.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the FBI's CJIS Division programs or wishing to address this session should notify the Senior CJIS Advisor, Mr. Roy G. Weise at (304) 625–2730, at least 24 hours prior to the start of the session.

The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

DATES: The APB will meet in open session from 8:30 a.m. until 5 p.m., on December 1–2, 2004.

ADDRESSES: The meeting will take place at the Rosen Plaza Hotel, 9700 International Drive, Orlando, Florida, telephone (407) 996–9700.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mrs. Barbara J. Ruckser, Management Analyst, Advisory Groups Management Unit, Programs Development Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149, telephone (304) 625–2163, facsimile (304) 625–5090.

Dated: October 1, 2004.

Roy G. Weise,

Senior CJIS Advisor, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 04–22821 Filed 10–8–04; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Working Group on Fees and Related Disclosure to Participants, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public teleconference meeting will be held on Wednesday, October 27, 2004, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study fee and related disclosures to plan participants.

The session will take place in Room N5677, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 1 p.m. to approximately 4 p.m., is for Working Group members to discuss and conclude their report/recommendations for the Secretary of Labor.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 20 copies to Larry Good, Executive Secretary, ERISA Advisory, U.S. Department of Labor, Room N–5656, 200 Constitution Avenue, NW., Washington, DC 20210. Statements received on or before October 20, 2004 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should

forward their request to the Executive Secretary at the above address or via telephone at (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by October 20 at the address indicated in this notice.

Signed at Washington, DC this 5th day of October, 2004

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 04–22792 Filed 10–8–04; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Working Group on Health and Welfare Form 5500 Requirements, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public teleconference meeting will be held on Friday, October 29, 2004, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study health and welfare Form 5500 requirements.

The session will take place in Room S4215–C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 1 p.m. to approximately 4 p.m., is for Working Group members to discuss and conclude their report/recommendations for the Secretary of Labor.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 20 copies to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5656, 200 Constitution Avenue, NW., Washington, DC 20210. Statements received on or before October 20, 2004 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary at the above address or via telephone at (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by October 20 at the address indicated in this notice.

Signed at Washington, DC this 5th day of October, 2004

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 04–22793 Filed 10–8–04; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employees Benefits Security Administration

Working Group on Plan Fees and Reporting on Form 5500, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public teleconference meeting will be held on Thursday, October 28, 2004, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study plan fees as reported on the Form 5500.

The session will take place in Room S4215–C, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 1 p.m. to approximately 4 p.m., is for Working Group members to discuss and conclude their report/recommendations for the Secretary of Labor.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 20 copies to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5656, 200 Constitution Avenue, NW., Washington, DC 20210. Statement received on or before October 20, 2004 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Work Group should forward their request to the Executive Secretary at the above address or via telephone at (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by October 20 at the address indicated in this notice.

Signed at Washington, DC this 5th day of October, 2004.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 04–22794 Filed 10–8–04; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,688]

California Manufacturing Company, California, MO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 27, 2004, in response to a petition filed by an employee on behalf of workers at California Manufacturing Company, California, Missouri.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. One employee does not meet this threshold level of employment. Consequently, the investigation has been terminated.

Signed at Washington, DC this 27th day of September, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–22804 Filed 10–8–04; 8:45 am]

BILLING CODE 4310–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,544]

Canteen Vending, Hickory, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 2, 2004, in response to a worker petition filed by a company official on behalf of workers at Canteen Vending, Hickory, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 28th day of September, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–22801 Filed 10–8–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,407, et al.]

Delta Energy Systems, Inc., Formerly Known as ASCOM Energy Systems, Inc., Including Leased Workers of Randstad North America; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 17, 2004, applicable to workers of Delta Energy Systems, Inc., including leased workers of Randstad North America, Palm Coast, Florida. The notice was published in the **Federal Register** on September 8, 2004 (69 FR 54321).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of power conversion products.

Information shows that as the result of a 2003 change in ownership, the correct name of the subject firm should read Delta Energy Systems, Inc., formerly known as Ascom Energy Systems, Inc.

New information shows that worker separations have occurred involving employees of the Palm Coast, Florida facility of Delta Energy Systems, formerly known as Ascom Energy Systems, Inc., operating at various locations in the states of Ohio, California and New Hampshire. These employees provided sales support function services for the production of power conversion products at the Palm Coast, Florida location of the subject firm.

Based on these findings, the Department is amending this certification to show that the company was formerly known as Ascom Energy Systems, Inc. and to include employees of the Palm Coast, Florida location of the subject firm operating at various locations in the states of Ohio, California and New Hampshire.

The intent of the Department's certification is to include all workers of Delta Energy Systems, Inc., formerly known as Ascom Energy Systems, Inc. who was adversely affected by increased imports.

The amended notice applicable to TA–W–55,407 is hereby issued as follows:

''All workers of Delta Energy Systems, Inc., formerly known as Ascom Energy Systems, Inc., Palm Coast, Florida, including leased workers of Randstad North America (TA–W–55,407), including employees of Delta Energy Systems, Inc., formerly known as Ascom Energy, Inc., Palm Coast, Florida operating at various locations in the state of Ohio (TA–W–55,407A), California (TA–W–55,407B) and New Hampshire (TA–W–55,407C), who became totally or partially separated from employment on or after July 14, 2003, through August 17, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1074.''

Signed at Washington, DC this 30th day of September 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–22800 Filed 10–8–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,800A]

Johnson Controls, Inc., Southview Plant, Door Panel Line, Including Leased Workers of Kelly Services, Holland, MI; Notice of Revised Determination on Reconsideration

By letter dated July 16, 2004, a company official requested administrative reconsideration regarding the Departments Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance (ATAA), applicable to the workers of the subject firm. The determination covering workers of Johnson Controls, Inc., Southview Plant, Sun Visor Line and Door Panel Line, including leased workers of Kelly Services, Holland, Michigan, (TA–W–54,800 and TA–W–54,800A) certified the Sun Visor Line for TAA and ATAA but denied TAA and ATAA certification to the Door Panel Line.

The Department's determination was signed on June 23, 2004. The Department's Notice of Determination was published in the **Federal Register** on August 3, 2004 (69 FR 46574).

The initial investigation determined that workers of the Sun Visor Line are separately identifiable from the Door Panel Line.

On reconsideration the company contact alleged that the workers of the Sun Visor Line are not separately identifiable from the Door Panel Line. Further contact with the company established that the workers of Johnson Controls, Inc., Southview Plant, Sun Visor Line and Door Panel Line, Holland, Michigan are not separately identifiable by product line.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that workers are not separately identifiable at the subject firm and that a shift in production of another article produced at the Holland, Michigan contributed to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

''All workers of Johnson Controls, Inc., Southview Plant, Door Panel Line, Holland, Michigan, including leased workers of Kelly Services working onsite at the subject facility, who became totally or partially separated from employment on or after April 8, 2003 through June 23, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC this 24th day of September 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–22796 Filed 10–8–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,665]

Brown & Williamson Tobacco Corporation Currently Known as R.J. Reynolds Tobacco Company an Operating Subsidiary of Reynolds American, Inc., Macon, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a

Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 7, 2004, applicable to workers of Brown & Williamson Tobacco Corporation, Macon, Georgia. The notice was published in the **Federal Register** on February 6, 2004 (69 FR 5867).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of cigarettes.

New information provided by the company shows that Brown & Williamson Tobacco Corporation is currently known as R.J. Reynolds Tobacco Company, an operating subsidiary of Reynolds American, Inc., as of July 30, 2004. Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for R.J. Reynolds Tobacco Company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Brown & Williamson Tobacco Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–53,665 is hereby issued as follows:

''All workers of Brown & Williamson Tobacco Corporation, currently known as R.J. Reynolds Tobacco Company, an operating subsidiary of Reynolds American, Inc., Macon, Georgia, who became totally or partially separated from employment on or after November 14, 2002, through January 7, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.''

Signed at Washington, DC this 23rd day of September 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–22795 Filed 10–8–04; 9:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,969]

Brown & Williamson Tobacco Corporation, Currently Known as R.J. Reynolds Tobacco Company an Operating Subsidiary of Reynolds American, Inc., Chester, VA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 8, 2004, applicable to workers of Brown & Williamson Tobacco Corporation, a subsidiary of British American Tobacco, Chester, Virginia. The notice was published in the **Federal Register** on July 7, 2004 (69 FR 40984).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of reconstituted tobacco sheets.

New information provided by the company shows that Brown & Williamson Tobacco Corporation is currently known as R.J. Reynolds Tobacco Company, an operating subsidiary of Reynolds American, Inc. as of July 30, 2004. Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for R.J. Reynolds Tobacco Company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Brown & Williamson Tobacco Corporation who were adversely affected by increased imports.

The amended notice applicable to TA-W–54,969 is hereby issued as follows:

''All workers of Brown & Williamson Tobacco Corporation, currently known as R.J. Reynolds Tobacco Company, an operating subsidiary of Reynolds American, Inc., Chester, Virginia, who became totally or partially separated from employment on or after May 20, 2003, through June 8, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

I further determine that all workers of Brown and Williamson Tobacco Corporation, currently known as R.J. Reynolds Tobacco Company, an operating subsidiary of Reynolds American, Inc., Chester, Virginia, are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 23rd day of September 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–22797 Filed 10–8–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,359]

Brown & Williamson Tobacco Corporation, Wilson Leaf Division, Currently Known as R.J. Reynolds Tobacco Company, an Operating Subsidiary of Reynolds American, Inc., Wilson, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 13, 2004, applicable to workers of Brown & Williamson Tobacco Corporation, Wilson Leaf Division, Wilson, North Carolina. The notice was published in the **Federal Register** on September 8, 2004 (69 FR 54321).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of tobacco leaf.

New information provided by the company shows that Brown & Williamson Tobacco Corporation is currently known as R.J. Reynolds Tobacco Company, an operating subsidiary of Reynolds American, Inc., as of July 30, 2004. Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for R.J. Reynolds Tobacco Company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of

Brown & Williamson Tobacco Corporation, Wilson Leaf Division, who were adversely affected by increased imports.

The amended notice applicable to TA–W–55,359 is hereby issued as follows:

All workers of Brown & Williamson Tobacco Corporation, Wilson Leaf Division, currently known as R.J. Reynolds Tobacco Company, an operating subsidiary of Reynolds American, Inc., Wilson, North Carolina, who became totally or partially separated from employment on or after July 30, 2003, through August 13, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 23rd day of September 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–22799 Filed 10–8–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,357]

Sanmina-Sci Corporation, Printed Ciruit Board Division, Wilmington, MA; Notice of Revised Determination of Alternative Trade Adjustment Assistance on Reconsideration

By letter dated September 14, 2004, a duly authorized representative of the Commonwealth of Massachusetts requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA) for workers of the subject firm. The Trade Adjustment Assistance (TAA) certification for workers of Sanmina-SCI Corporation, Printed Circuit Board Division, Wilmington, Massachusetts was signed on August 13, 2004. The Department's notice will soon be published in the **Federal Register**.

The initial investigation determined that while at least five percent of the workforce at the subject firm is at least fifty years of age, workers of the subject worker group possess skills that are easily transferable.

Additional investigation has determined that the workers do not possess skills that are easily transferable to comparable positions within the local commuting area and that competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

''All workers of at Sanmina-SCI Corporation, Printed Circuit Board Division, Wilmington, Massachusetts, who became totally or partially separated from employment on or after July 30, 2003 through August 13, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC this 22nd day of September 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–22798 Filed 10–8–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,606]

Siskiyou Gifts, Medford, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 14, 2004 in response to a petition filed by a company official on behalf of workers at Siskiyou Gifts, Medford, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC this 24th day of September 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–22802 Filed 10–8–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,679]

Thor-Tex, Inc.; Albermarle, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 24, 2004 in response to a worker petition filed by a company official on behalf of workers at Thor-Tex, Inc., Albermarle, North Carolina.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three workers employed at some point during the period under investigation. Workers of the group subject to this investigation did not meet this threshold of employment. Consequently the investigation has been terminated.

Signed at Washington, DC, this 27th day of September 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–22803 Filed 10–8–04; 8:45 am]

BILLING CODE 4510–30–U

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 9, 2004, the National Science Foundation published a notice in the **Federal Register** of a permit applications received. A permit was issued on October 5, 2004 to: Yu-Ping Chin, Permit No. 2005–012

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 04–22817 Filed 10–8–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143]

Notice of Issuance of License Amendment 51 for Nuclear Fuel Services, Inc., Blended Low-Enriched Uranium Processing Facility, Erwin, TN

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance of Amendment 51 to Materials License SNM–124.

FOR FURTHER INFORMATION CONTACT: Michael Lamastra, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8 F42, Washington, DC 20555–0001, Telephone (301) 415–8139 or via email to *mxl2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the U.S. Nuclear Regulatory Commission (NRC) is providing notice of the issuance of Amendment 51 to Special Nuclear Materials License SNM–124 to Nuclear Fuel Services, Inc. (NFS) authorizing the possession and use of special nuclear material in the Blended Low-Enriched Uranium Oxide Conversion Building and Effluent Processing Building at the licensee's site in Erwin, Tennessee. NFS' request for the proposed action was previously noticed in the **Federal Register** on December 24, 2003 (68 FR 74653), along with a notice of opportunity to request a hearing.

This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and NRC's rules and regulations as set forth in 10 CFR chapter 1. Accordingly, this amendment was issued on July 30, 2004, and was effective immediately.

II. Further Information

The NRC has prepared a non-proprietary (public) version of the Safety Evaluation Report (SER) that documents the information that was reviewed and NRC's conclusion. In accordance with 10 CFR 2.390 of the NRC's ''Rules of Practice,'' details with respect to this action, including the non-proprietary version of the SER and accompanying documentation included in the license amendment package, are available for inspection at the NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS accession number ML042660436). These documents may also be viewed electronically on the computers located at the NRC Public Document Room (PDR), O1F21 One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS should contact the NRC PDR Reference Staff by telephone at 1 (800) 397–4209 or (301) 415–4737, or via e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 4th day of October, 2004.

For the Nuclear Regulatory Commission.

John Lubinski,

Chief, Fuel Manufacturing Section, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–22785 Filed 10–8–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–03258]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Brooke Army Medical Center, Sam Houston, TX

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Rachel S. Browder, M.S., Health Physicist, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region IV, Arlington Texas 76011. Telephone: (817) 276–6552; fax number: (817) 860–8263; e-mail: *rsb3@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing a license amendment to Byproduct Materials License No. 42–01368–01 issued to Department of the Army, Brooke Army Medical Center, to authorize release of its Building 2630, ''Department of Pathology and Laboratory Services,'' except for rooms 120 and 156, for unrestricted use. Building 2630 is located at 2473 Schofield Road, Fort Sam Houston, Texas, and is surrounded by veterinary facilities and recreational/dinner amenities. The NRC has prepared an Environmental Assessment (EA) in support of this amendment in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed amendment is to allow for the release of Building 2630, ''Department of Pathology and Laboratory Services,'' except for rooms 120 and 156, located on the Brooke Army Medical Center campus in Fort Sam Houston, Texas, for unrestricted use. Brooke Army Medical Center is authorized by the NRC in License Number 42–01368–01 to use radioactive materials for medical research, diagnosis, therapy, *in vitro* studies, in addition to studies in laboratory animals. Brooke Army Medical Center obtained Building 2630 in 1968. The building originally housed the chemistry section of the Army Medical Lab. In 1975, the Army Medical Lab was consolidated with the Department of Pathology to form the Department of Pathology and Area Laboratory Services. This consolidation also consisted of Army Medical Lab's NRC license being combined with Brooke Army Medical Center's NRC License. Currently, Building 2630 is partially occupied and controlled by the Veterinary Clinic staff. On February 10, 2004, Brooke Army Medical Center requested that NRC release the facility for unrestricted use, except for rooms 120 and 156. Brooke Army Medical Center has conducted surveys of the building and submitted the Final Status Survey Report to the NRC to demonstrate that the building meets the license termination criteria in subpart E of 10 CFR part 20 for unrestricted use. There is no radiological contamination above the U.S. Army criteria for release or distinguishable from background as reflected by the survey results. No radiological remediation activities are required to complete the proposed action.

The staff has prepared an EA in support of the proposed license amendment to the NRC Byproduct Materials License No. 42–01368–01 issued to Department of the Army, Brooke Army Medical Center, to release Building 2630, except for rooms 120 and 156, for unrestricted use. The NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on the proposed action for decommissioning which ensures residual radioactivity is reduced to a level that is protective of the pubic health and safety and the environment, and allows Brooke Army Medical Center to release Building 2630, except for rooms 120 and 156, for unrestricted use.

The NRC staff has reviewed the information and final status surveys submitted by Brooke Army Medical Center. Based on its review, the staff determined there were no radiological or non-radiological remediation activities required to complete the proposed action. Additionally, there are no outdoor areas affected by the use of licensed materials. The staff has therefore concluded that the release of Brooke Army Medical Center's Building 2630, except for rooms 120 and 156, for unrestricted use is acceptable. The only alternative to the proposed action of releasing the facility for unrestricted use is no action. The no-action alternative is not acceptable because it is inconsistent with the NRC's Timeliness Rule (10 CFR 30.36), which requires licensees to decommission their facilities when licensed activities cease in any separate building or outdoor area, and subsequently request release of the respective building or outdoor area. Denial of the license amendment request would result in no change to current conditions at the facility.

III. Finding of No Significant Impact

The staff has prepared an EA in support of the proposed license amendment to release Building 2630, except for rooms 120 and 156 for unrestricted use. The staff has found that the environmental impacts from the proposed amendment are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). The staff has also found that the non-radiological impacts are not significant. On the basis of the EA, NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you may access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: Licensee's Amendment Request (ML040570755), NRC's Request for Additional Information (ML040960238), Licensee's Response to Request (ML041600167), and Environmental Assessment (ML042670059). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Arlington, Texas this 4th day of October, 2004.

For the Nuclear Regulatory Commission.

Jack E. Whitten,

Chief, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, Region 4.

[FR Doc. 04–22787 Filed 10–8–04; 9:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382]

Entergy Operations, Inc.; Waterford Steam Electric Station, Unit 3 Draft Environmental Assessment and Finding of No Significant Impact Related to the Proposed License Amendment To Increase the Maximum Reactor Power Level

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of opportunity for public comment.

SUMMARY: The NRC has prepared a draft environmental assessment as its evaluation of a request by Entergy Operations, Inc. (Entergy, the licensee) for a license amendment to increase the maximum thermal power at the Waterford Steam Electric Station 3 (Waterford 3) from 3441 megawatts thermal (MWt) to 3716 MWt. This represents a power increase of approximately 8 percent for Waterford 3. The NRC staff has the option of preparing an environmental impact statement if it believes a power uprate will have a significant impact on the human environment. The NRC staff did not identify any significant impact from the information provided in the licensee's extended power uprate (EPU) application for Waterford 3 or the NRC staff's independent review; therefore, the NRC staff is documenting its environmental assessment. The draft environmental assessment and finding of no significant impact is being published in the **Federal Register** with a 30-day public comment period.

Environmental Assessment

Background

Plant Site and Environs

The NRC is considering issuance of an amendment to Facility Operating License No. NPF–38, issued to Entergy for Waterford 3 which has been in operation since March 4, 1985. The facility is located on the west (right descending) bank of the Mississippi River, approximately 40 kilometers (25 miles) west of New Orleans on Louisiana Highway 18 (River Road) in St. Charles Parish, in the city of Killona, Louisiana. The plant's topography, except for the levee along the Mississippi River, is generally flat with an elevation of 8 to 16 feet above mean sea level. Electricity is generated using a pressurized water reactor and steam turbine with a maximum generating capacity of 1,104 Megawatts electric. The fuel source for the unit is enriched Uranium-235. The exhaust steam is condensed using a once-through circulating water system with the Mississippi River as a heat sink. Additionally, the component cooling water system serves as the station's ultimate heat sink and is designed to remove heat from the plant during normal operation, shutdown, or emergency shutdown.

Three-quarters of a mile downstream from the Waterford 3 site is the Bonnet Carre' Spillway. The Bonnet Carre' Spillway is a vital element of the comprehensive plan for flood control in the Lower Mississippi Valley. It is located on the east bank of the Mississippi River, approximately 25 miles above New Orleans and was constructed to divert approximately 250,000 cubic feet per second of floodwaters from the Mississippi River to Lake Pontchartrain to prevent overtopping of levees at and below New Orleans, assuring the safety of New Orleans and the downstream delta area during major floods on the Lower Mississippi.

Identification of the Proposed Action

By letter dated November 13, 2003, Entergy proposed to increase the maximum thermal power level of Waterford 3 by approximately 8 percent, from 3441 MWt to 3716 MWt. The change is considered an EPU because it would raise the reactor core power level more than 7 percent above the originally

licensed maximum power level. The NRC originally licensed Waterford 3 on March 16, 1985, for operation at a reactor core power not to exceed 3390 MWt. On March 29, 2002, the NRC staff approved a power increase of approximately 1.5 percent allowing Waterford 3 to operate at a core power level not to exceed 3441 MWt. Therefore, this proposed action would result in a total increase of approximately 9.6 percent over the originally licensed maximum power level. The amendment would allow the heat output of the reactor to increase, which would increase the flow of steam to the turbine. This would allow the turbine generator to increase the production of power as well as increase the amount of heat dissipated by the condenser. Moreover, this would result in an increase in temperature of the water being released into the Mississippi River.

Need for the Proposed Action

Entergy is requesting an amendment to the operating license for Waterford 3 to increase the maximum thermal power level, thereby increasing the electric power generation. The increase in electric power generation provides Entergy with lower cost power than can be obtained in the current and anticipated energy market.

Environmental Impacts of the Proposed Action

This assessment summarizes the non-radiological and radiological impacts on the environment that may result from the licensee's amendment request application dated November 13, 2003.

Non-Radiological Impacts

Land Use Impacts

The potential impacts associated with land use for the proposed action include impacts from construction and plant modifications. The Waterford 3 property is made up of 52 percent wetlands and 22 percent of the land is used for agriculture. There is no residential or recreational land on the property. There is no plan to construct any new facilities or expand buildings, roads, parking lots, equipment storage, or laydown areas. No changes to the onsite transmission and distribution equipment, including power line rights-of-way, are anticipated to support this action. No new construction outside of the existing facilities will be necessary.

The proposed EPU will require a modification to the high pressure turbine. The turbine is located within the turbine building, and the modification will not require any land disturbance. The EPU would not significantly affect material storage, including chemicals, fuels, and other materials stored aboveground or underground. There is no modification to land use at the site, and no impact on the lands with historic or archeological significance. The proposed EPU would not modify the current land use at the site significantly over that described in the Final Environmental Statement (FES).

The licensee has stated that the proposed EPU will not change the character, sources, or energy of noise generated at the plant. Modified structures, systems, and components necessary to implement the power uprate will be installed within existing plant buildings and no noticeable increase in ambient noise levels within the plant is expected.

Therefore, the NRC staff concludes that the environmental impacts of the proposed EPU are bounded by the impacts previously evaluated in the FES.

Transmission Facility Impacts

The potential impacts associated with transmission facilities for the proposed action include changes in transmission line corridor right-of-way maintenance and electric shock hazards due to increased current. The proposed EPU would not require any physical modifications to the transmission lines. Entergy's transmission line right-of-way maintenance practices, including the management of vegetation growth, would not be affected. No new requirements or changes to onsite transmission equipment, operating voltages, or transmission line rights-of-way would be necessary to support the EPU. The main plant transformers will be modified and replaced to support the uprate; however, replacement of the transformers would have been required before the end of plant life as part of the licensee's ongoing maintenance program. Therefore, no significant environmental impact beyond that considered in the FES is expected from this kind of replacement of onsite equipment.

The National Electric Safety Code (NESC) provides design criteria that limit hazards from steady-state currents. The NESC limits the short-circuit current to ground to less than 5 milli-ampere. There will be an increase in current passing through the transmission lines associated with the increased power level of the proposed EPU. The increased electrical current passing through the transmission lines will cause an increase in electromagnetic field strength. Since the increase in power level is approximately 8 percent, the increase in the electromagnetic field will not be significant. The licensee's analysis shows that the transmission lines will continue to meet the applicable shock prevention provisions of the NESC. Therefore, even with the slight increase in current attributable to the EPU, adequate protection is provided against hazards from electric shock.

The impacts associated with transmission facilities for the proposed action will not change significantly over the impacts associated with current plant operation. There are no physical modifications to the transmission lines; transmission line right-of-way maintenance practices will not change. There are no changes to transmission line rights-of-way or vertical clearances and the electric current passing through the transmission lines will increase only slightly. Therefore, the NRC staff concludes that there are no significant impacts associated with transmission facilities for the proposed action. The transmission lines are designed and constructed in accordance with the applicable shock prevention provisions of the NESC.

Water Use Impacts

Potential water use impacts from the proposed action include hydrological alterations to the Mississippi River and changes to the plant water supply. The Mississippi River is the source of water for cooling and most auxiliary water systems at Waterford 3. The cooling water is withdrawn from the Mississippi River via an intake canal approximately 49 meters (m) (162 feet (ft)) long leading from the river to an intake structure containing four water pumps. The cooling water for the circulating water system (CWS) is pumped through the condenser to condense the turbine exhaust steam to water. The water then flows to the discharge canal approximately 29 m (95 ft) long and is returned to the river through the discharge structure. The water from the CWS is also used in the turbine system heat exchangers and the steam generator blowdown system.

The Mississippi River is the principal water source of all municipal, industrial, and agricultural use for towns and water districts downstream of Baton Rouge, Louisiana. All of the water required for plant operation, except potable water, will be withdrawn from the Mississippi River. The rate of withdrawal will not increase as a result of the EPU. As a result, operation of Waterford 3 will not affect the availability of water to downstream water users. Groundwater is not used in

plant operations; therefore, there are no impacts to onsite groundwater use. The NRC staff concludes that the EPU would not have a significant impact on water usage as a result of hydrological alterations or changes in the plant water supply.

Discharge Impacts

The potential impacts to the Mississippi River from the plant discharge include turbidity, scouring, erosion, and sedimentation. These impacts can occur as a result of significant changes in the thermal discharge, sanitary waste discharge, and chemical discharge.

1. Thermal Discharge

Surface water and wastewater discharges at Waterford 3 are regulated by the State of Louisiana via a Louisiana Pollutant Discharge Elimination System (LPDES) Permit. This permit is periodically reviewed and renewed by the Louisiana Department of Environmental Quality (LDEQ). The EPU is expected to increase the temperature of the water discharged to the Mississippi River.

The LPDES Permit (1) restricts the temperature rise in the discharge water to five degrees Fahrenheit over the temperature of the river water and (2) limits the temperature of the discharge water to 118 degrees Fahrenheit. The licensee has calculated the increased heat load delivered to the CWS under EPU conditions and estimated an expected increase in the discharge water temperature of 2.2 degrees Fahrenheit. Based on this expected temperature increase from power uprate, the temperature limits defined in the LPDES Permit are adequate, and no changes to the LPDES Permit are necessary.

2. Chemical Discharge

Wastewater treatment chemicals that are currently regulated and approved by the State of Louisiana through the LPDES Permit for use in the once-through cooling water will not change as a result of the power uprate. The concentration of pollutants in the once-through effluent stream will remain the same and have insignificant impact.

3. Sanitary Waste Discharge

Sanitary wastes at the Waterford 3 facility are discharged to an onsite sewage treatment plant. Since there will be no increase in the Waterford 3 staffing levels as a result of the power uprate, there will also be no increase in sanitary waste. The use of chemicals will not change as a result of the power uprate, and the power uprate will have no impact on current water chemical usage.

Therefore, the NRC staff concludes that the environmental impacts associated with the plant discharge will not be significant.

Impacts on Aquatic Biota

The potential impacts to aquatic biota from the proposed actions include impingement and entrainment, thermal discharge effects, and changes associated with the transmission line rights-of-way. Aquatic species found in the vicinity of Waterford 3 are associated with the Mississippi River. The river near the Waterford 3 site region supports aquatic biota ranging from microorganisms and various plankton to large commercial finfish. The more abundant fish near the site area include blue catfish, channel catfish, freshwater drum, and striped mullet. There are no unique fish habitats in the river near Waterford 3.

1. Impingement and Entrainment

Fish and other organisms removed from the cooling water by the traveling water screens are washed to a trough to a point downstream of the intake. The EPU will not increase the withdrawal rate or change current pumping operations. Therefore, the water velocity through the traveling screens will not change as a result of the EPU. The flowrate of water being withdrawn from the intake canal at the intake structure would not increase and no change would be made in the design of the intake structure screens. Therefore, changes in the entrainment of aquatic organisms or in the impingement of fish are not anticipated as a result of the EPU.

2. Thermal Discharge Effects (Heat Shock)

Entergy has conducted thermal studies in the Mississippi River in the vicinity of the Waterford 3 discharge for over 25 years and no adverse impacts on fish have been observed. The temperature of the water discharged to the river will remain within the limits of the LPDES Permit. The LPDES Permit states that the bounding thermal limit adequately regulates the amount of heat discharged to the Mississippi River from this facility such that it protects the balanced indigenous population.

3. Transmission Line Rights-of-Way

There will not be changes in transmission line right-of-way maintenance practices associated with the EPU. Therefore, no changes are expected in the amount of water or in the water quality of the water run-off to the streams or the river.

The EPU will not increase the flow of the water withdrawn from the river, and the amount of heat discharged to the Mississippi River will remain within the thermal limit specified by the LPDES Permit. There are no changes in transmission line right-of-way maintenance practices associated with the proposed action. Therefore, the NRC staff concludes that there are no significant impacts to aquatic biota for the proposed action.

Impacts on Terrestrial Biota

The potential impacts to terrestrial biota from the proposed action include construction activities and changes associated with the transmission line right-of-way maintenance. The power uprate will not disturb land, and no construction activities are planned for the EPU. The proposed EPU will not change the land use at Waterford 3, and no habitat of any terrestrial plant or animal species will be disturbed as a result of this power uprate. In addition, none of Entergy's transmission line rights-of-way maintenance practices will change. Therefore, the NRC staff concludes that there will be no significant impact to the habitat of any terrestrial plant or animal species as a result of the EPU.

Threatened and Endangered Species

Potential impacts to threatened and endangered species from the proposed action include the impacts assessed in the aquatic and terrestrial biota sections of this environmental assessment. These impacts include impingement and entrainment, thermal discharge effects, and impacts due to transmission line right-of-way maintenance for aquatic species, and impacts to terrestrial species from transmission line right-of-way maintenance and construction activities.

There are five species listed as threatened or endangered under the Federal Endangered Species Act within St. Charles Parish, Louisiana. These are the bald eagle (Haliaeetus leucocephalus), brown pelican (Pelecanus occidentalis), Gulf sturgeon (Acipenser oxyrinchus desotoi), pallid sturgeon (Scaphirhynchus albus), and the West Indian manatee (Trichechu manatus). There have been reported sightings of the bald eagle (H. leucocephalus), gulf sturgeon (A. oxyrinchus desotoi), and the pallid sturgeon (S. albus) in St. Charles Parish. Thermal studies documented in the LPDES fact sheet found that no threatened or endangered species were present near Waterford 3.

In a letter dated March 15, 2004, the Louisiana Fish and Wildlife Service (LFWS) commented on the endangered species in the vicinity of the station. The pallid sturgeon was identified as an endangered fish found in both the Mississippi and Atchafalaya Rivers. The West Indian manatee (T. manatus) was also listed as a Federally protected species known to inhabit Lakes Pontchartrain and Maurepas and associated coastal waters and stream during summer months. The LFWS did not identify any critical habitat in the vicinity of the site.

According to Entergy, the impacts from the Waterford 3 EPU to these species is insignificant because: (1) the EPU for Waterford 3 will not result in a decline of suitable habitat for these species; and (2) sightings of these species are rare and infrequent. Therefore, the NRC staff concludes that the proposed EPU would not affect threatened and endangered species significantly over the effects described in the FES.

Social and Economic Impacts

Potential social and economic impacts due to the proposed action include changes in tax revenue for St. Charles Parish and changes in the size of the workforce at Waterford 3. The NRC staff has reviewed information provided by the licensee regarding socioeconomic impacts. Waterford 3 is a major employer in the community with approximately 750 full-time employees. Entergy is also a major contributor to the local tax base. Entergy personnel also contribute to the tax base by paying sales taxes. Because the plant modifications needed to implement the EPU would be minor, any increase in sales tax and additional revenue to local and national business will be negligible relative to the large tax revenues generated by Waterford 3. It is expected that the proposed uprate will reduce incremental operating costs, enhance the value of Waterford 3 as a power-generating asset, and lower the probability of early plant retirement. Early plant retirement would be expected to have a significant negative impact on the local economy and the community as a whole by reducing tax revenues and limiting local employment opportunities, although these effects could be mitigated by decommissioning activities in the short term. The proposed EPU would not significantly affect the size of the Waterford 3 labor force and would have no material effect upon the labor force required for future outages after all stages of the modifications needed to support the EPU are completed.

Summary

In summary, the proposed EPU would not result in a significant change in non-radiological impacts in the areas of site, land use, transmission facility operation, water use, discharge, aquatic biota, terrestrial biota, threatened and endangered species, or social and economic factors. No other non-radiological impacts were identified or would be expected. Table 1 summarizes the non-radiological environmental impacts of the proposed EPU at Waterford 3.

TABLE 1.—SUMMARY OF NON-RADIOLOGICAL ENVIRONMENTAL IMPACTS

Land Use	No change in land use or aesthetics; will not impact lands with historic or archeological significance. No significant impact due to noise.
Transmission Facilities	No physical modifications to the transmission lines and facilities; no changes to rights-of-way; no significant change in electromagnetic field around the transmission lines; shock safety requirements will be met.
Water Use Surface Water	No increase in the water withdrawal rate from the river. Water withdrawal rate remains consistent with previous levels.
Groundwater	No change in groundwater use.
Discharge thermal discharge	No significant increase in temperature or heat load. Current LPDES Permit has adequate limits to accommodate any expected temperature and heat load increases.
Chemical and Sanitary Discharge	No expected change to chemical use and subsequent discharge, or sanitary waste systems; no change in pollutants to once-through cooling water effluent. No changes to sanitary waste discharges.
Aquatic Biota	No expected increased impact on aquatic biota.
Thermal Discharge (Heat Shock)	Historically not a problem. Additional heat is not expected to affect frequency of heat shock events or significantly increase the impact to aquatic biota.
Terrestrial Biota	No additional impact on terrestrial biota.
Threatened and Endangered Species	No expected increased impact on threatened and endangered species as a result of the EPU.
Social and Economic	No significant change in size of Waterford 3 workforce.

Radiological Impacts

Radioactive Waste Systems

Waterford 3 uses Waste Treatment Systems designed to collect, process, and dispose of radioactive gaseous, liquid, and solid wastes in accordance with the requirements of Title 10 of the Code of Federal Regulations (10 CFR) part 20 and 10 CFR part 50, appendix I. The NRC staff concludes that the proposed power uprate will not result in changes to the operation or design of equipment used in the radioactive gaseous, liquid, or solid waste systems.

Gaseous Radioactive Waste

The Waterford 3 Gaseous Waste Treatment System is designed to collect, process, and dispose of radioactive gaseous waste in accordance with the requirements of 10 CFR part 20 and 10 CFR part 50, appendix I.

The licensee calculated that the EPU will increase the potential doses to the public from gaseous effluents by less than 0.1 millirem per year over current doses, which are less than one millirem per year. These potential doses are well within the dose design objectives of 10 CFR part 50, appendix I and the annual doses projected in the FES. Therefore, the estimated increase in the offsite dose from gaseous effluents due to the EPU will be small with no significant impact on human health.

Liquid Radioactive Waste

The Waterford 3 Liquid Waste Treatment System is designed to collect, process, and dispose of radioactive liquid waste in accordance with the requirements of 10 CFR part 20 and 10 CFR part 50, appendix I.

The licensee calculated that the EPU will increase the potential doses to the public from liquid effluents by approximately 10 percent over the current doses, which are less than 0.01 millirem per year. These potential doses are well within the dose design objectives of 10 CFR Part 50, Appendix I and the annual doses projected in the FES. Therefore, the estimated increase in the offsite dose from liquid effluents

due to the EPU will be small with no significant impact on human health.

Solid Radioactive Waste

The Solid Radioactive Waste System collects, monitors, processes, packages, and provides temporary storage facilities for radioactive solid wastes prior to offsite shipment and permanent disposal. From 1998 through 2002, approximately 22,520 cubic feet of low level radioactive waste was generated, for an average of about 4,500 cubic feet per year.

There are three types of solid radioactive waste: wet waste, dry waste, and irradiated reactor components. The typical contributors to solid radioactive wet waste are secondary and primary resin, contaminated filters, oil, and sludge from various plant systems. The EPU will not change either reactor water cleanup flow rates or filter performance. However, the increased core inventory of radionuclides may lead to slightly more frequent replacement of filters and resins. Therefore, implementation of the EPU will not have a significant impact on the volume or activity of solid radioactive wet waste generated at Waterford 3.

Dry radioactive waste consists primarily of air filters, paper products, rags, clothing, tools, equipment parts that cannot be effectively decontaminated, and solid laboratory wastes. No significant change in the amount of dry waste is expected as a result of the EPU.

Irradiated reactor components such as in-core detectors and fuel assemblies must be replaced periodically. The volume and activity of waste generated from spent fuel assemblies and in-core detectors will increase slightly with the EPU conditions. The EPU would increase the number of fresh fuel bundles needed during each refueling cycle by four. This increase in the number of bundles will result in a slight increase in spent fuel discharge to the spent fuel pool.

The NRC staff concludes that any projected increases in solid waste generation under the EPU conditions will not be significant.

Direct Radiation Dose

The licensee evaluated the direct radiation dose to the unrestricted area and concluded that it is not a significant exposure pathway. Since the EPU will slightly increase the core inventory of radionuclides and the amount of solid radioactive wastes, the NRC staff concludes that direct radiation dose will not be significantly affected by the EPU and will continue to meet the limits in 10 CFR part 20.

Occupational Dose

Occupational exposures from in-plant radiation primarily occur during routine maintenance, special maintenance, and refueling operations. An increase in power at Waterford 3 could increase the radiation levels in the reactor coolant system. However, plant programs and administrative controls such as shielding, plant chemistry, and the radiation protection program will help compensate for these potential increases. The average collective worker dose at Waterford 3 over the five-year period from 1998 to 2002 was 80.3 person-rem/yr. Conservatively assuming a linear increase in the occupational exposure due to the EPU, the projected in-plant occupational exposure would increase to approximately 88 person-rem/yr, which is well below the 1300 person-rem/yr estimated in the Waterford 3 FES. The increase is based on the power uprate ratio of .096 (3716 MWt/3390 MWt). Therefore, no significant occupational dose impacts will occur as a result of the EPU.

The EPU will not result in a significant increase in normal operational radioactive gaseous and liquid effluent levels, direct doses offsite, or occupational exposure. Potential doses to the public from effluents will continue to be well within the dose design objectives of 10 CFR part 50, appendix I and the annual doses projected in the FES. Any increase in direct doses offsite will continue to be within the limits of 10 CFR part 20 and the slight potential increase in occupational exposure will be well within the FES estimate.

Postulated Accident Doses

As a result of implementation of the proposed EPU, there will be an increase in the source term used in the evaluation of some of the postulated accidents in the FES.

The inventory of radionuclides in the reactor core is dependent on power level; therefore, the core inventory of radionuclides could increase by as much as 9.6 percent. The concentration of radionuclides in the reactor coolant may also increase by as much as 9.6 percent; however, this concentration is limited by the Waterford 3 Technical Specifications and is more dependent on the degree of leakage occurring through the fuel cladding. The overall quality of fuel cladding has improved since the FES was published and Waterford 3 has been experiencing very little fuel cladding leakage in recent years. Therefore, the reactor coolant concentration of radionuclides would not be expected to increase significantly. This coolant concentration is part of the source term considered in some of the postulated accident analyses.

For those postulated accidents where the source term increased, the calculated potential radiation dose to individuals at the site boundary (the exclusion area) and in the low population zone would be increased over the values presented in the FES. However, the calculated doses would still be below the acceptance criteria of 10 CFR part 100, ''Reactor Site Criteria,'' and the Standard Review Plan (NUREG–0800). Therefore, the NRC staff concludes that the increased environmental impact in terms of potential increased doses from the postulated accidents are not significant.

Fuel Cycle and Transportation

The environmental impacts of the fuel cycle and transportation of fuels and wastes are described in Tables S–3 and S–4 of 10 CFR 51.51 and 10 CFR 51.52, respectively. An additional NRC generic environmental assessment (53 FR 30355, dated August 11, 1988, as corrected by 53 FR 32322, dated August 24, 1988) evaluated the applicability of Tables S–3 and S–4 to higher burnup cycle. The assessment concluded that there is no significant change in environmental impacts for fuel cycles with uranium enrichments up to 5.0 weight-percent U–235 and burnups less than 60 gigawatt-day per metric ton of uranium (GWd/MTU) from the parameters evaluated in Tables S–3 and S–4. In an amendment dated July 10, 1998, Waterford 3 was granted the ability to increase the fuel enrichment from 4.9 percent to 5.0 percent. Since the fuel enrichment for the power uprate will not exceed 5.0 weight-percent U–235 and the rod average discharge exposure will not exceed 60 GWd/MTU, the environmental impacts of the proposed power uprate will remain bounded by these conclusions and will not be significant.

Summary

The proposed EPU would not result in a significant increase in occupational or public radiation exposure, would not significantly increase the potential doses from postulated accidents, and would not result in significant additional fuel cycle environmental impacts. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action. Table 2 summarizes the radiological environmental impacts of the proposed EPU at Waterford 3.

TABLE 2.—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS

Radiological Waste Stream	No change in design or operation of waste streams.
Gaseous Waste	Slight increase in amount of radioactive material in gaseous effluents; within FES estimate; offsite doses would continue to be well within NRC criteria.
Liquid Waste	Slight increase in amount of radioactive material in liquid effluents; within FES estimate; offsite doses would continue to be well within NRC criteria.
Solid Waste	No significant change in radioactive resins; no significant changes in dry waste; no significant changes in irradiated components.
Dose Impacts Occupational Dose	Up to 9.6 percent increase in collective occupational dose possible; well within FES estimate.
Offsite Direct Dose	Slight increase possible; not significant; offsite doses would continue to be within NRC criteria.
Postulated Accidents	Up to 9.6 percent increase in calculated doses from some postulated accidents; calculated doses within NRC criteria.
Fuel Cycle and Transportation	Increase in bundle average enrichment. Fuel enrichment and burnup would continue to be within bounding assumptions for Tables S–3 and S–4 in 10 CFR Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Function;'' conclusions of tables regarding impact would remain valid.

Alternatives to Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed EPU (*i.e.*, the ''no-action alternative''). Denial of the application would result in no change in the current environmental impacts; however, other fossil-fuel generating facilities may need to be built in order to maintain sufficient power-generating capacity. As an alternative, the licensee could purchase power from power generating facilities outside the service area. The additional power would likely also be generated by fossil fuel facilities. Construction and operation of a fossil-fueled plant would create impacts in air quality, land use, and waste management significantly greater than those identified for the EPU at Waterford 3.

Implementation of the proposed EPU would have less impact on the environment than the construction and operation of a new fossil-fueled generating facility or the operator of fossil facilities outside the service area. Furthermore, the EPU does not involve environmental impacts that are significantly different from those presented in the 1981 FES for Waterford 3.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the 1981 FES for Waterford 3.

Agencies and Persons Consulted

In accordance with its stated policy, on August 13, 2004, the NRC staff consulted with the Louisiana State official, Ms. Nan Calhoun of the LDEQ, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

DATES: The comment period expires November 12, 2004. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration of comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T–6 D59, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Room T–6D59, Rockville, Maryland 20852, from 7:30 a.m. to 4:15 p.m. on Federal workdays. Copies of written comments received will be electronically available at the NRC's Public Electronic Reading Room link *http://www.nrc.gov/reading-rm/adams.html* on the NRC Homepage or at the NRC's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is considering issuance of an amendment to Facility Operating License No. NPF–38 issued to Entergy for operation of Waterford 3 located in St. Charles Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: N. Kalyanam, Office of Nuclear Reactor Regulation, Mail Stop O–7D1, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at (301) 415–1480, or by e-mail at *nxk@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of September 2004.

For the Nuclear Regulatory Commission.

Michael K. Webb,

Acting Chief, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from September 17, 2004, through September 30, 2004. The last biweekly notice was published on September 28, 2004 (69 FR 57978).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of

the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by email to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: April 14, 2004.

Description of amendment request: The proposed amendment would make changes to the Technical Specifications (TSs) that will eliminate secondary containment operability requirements when handling sufficiently decayed irradiated fuel and performing core alterations, and will clarify requirements associated with operations with potential to drain the reactor vessel. This proposed amendment also uses Alternate Source Term (AST) methodology in accordance with 10 CFR 50.67 for calculating Fuel Handling Accident (FHA) consequences. The proposed amendment also removes TSs operability requirements for engineered safety features (ESF) (*e.g.* primary/secondary containment, standby gas treatment, and isolation capability) after the sufficient decay of ''recently'' irradiated fuel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Do the Proposed Changes Involve a Significant Increase in the Probability or Consequence of an Accident Previously Evaluated?

The proposed changes do not modify the design or operation of equipment used to handle and move new and spent fuel or to perform core alterations. The proposed amendment does not modify the design of the ESF equipment. The proposed changes, therefore, will not increase the probability of accidents previously evaluated.

AST analysis does not affect the performance of the systems or components used to mitigate the consequences of accidents previously evaluated. While a direct comparison between current methodologies used in the current Pilgrim design basis analysis and Regulatory Guide (RG) 1.183 is not possible due to different acceptance criteria, the AST calculations demonstrate that the radiological consequences to the accidents previously evaluated will still remain below the regulatory limits. Therefore, any potential change in the radiological consequences are not considered significant. Since the radiological consequences are below the regulatory limits and the probability of an accident is unchanged, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the Proposed Changes Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Analyzed?

There are no new plant operation modes or physical modifications being proposed. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Do the Proposed Changes Involve a Significant Reduction in the Margin of Safety?

The licensee performed a comprehensive analysis and evaluation of the FHA using AST methodology and dose consequence analysis in accordance with 10 CFR 50.67. While direct comparison between methodologies used in the current Pilgrim design basis analysis and RG 1.183 is not possible due to different acceptance criteria, the revised doses will, however, remain below the total effective dose equivalent dose regulatory limits for the control room, exclusion area boundary, and low population zone as specified in 10 CFR 50.67. Therefore, by meeting the applicatory regulatory limits for AST, any potential decrease in a margin of safety would not be considered significant. The changes are, therefore, not considered a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360–5599.

NRC Acting Section Chief: Daniel S. Collins.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: June 17, 2004.

Description of amendment request: The proposed amendment would delete

entries from Technical Specification (TS) Tables 3.2.6 and 4.2.6 related to the post-accident hydrogen and oxygen monitors. Licensees were generally required to implement upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide (RG) 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, ''Combustible gas control system for nuclear power reactors,'' eliminated the requirements for hydrogen recombiners (not installed at Vermont Yankee and therefore not addressed by this proposed amendment) and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated June 17, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1 — The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen and oxygen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG 1.97 Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen and oxygen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents. Also, as part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 2, as defined in RG 1.97, is an appropriate categorization for the oxygen monitors, because the monitors are required to verify the status of the inert containment.

The regulatory requirements for the hydrogen and oxygen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, classification of the oxygen monitors as Category 2, and removal of the hydrogen and oxygen monitors from TSs will not prevent an accident management strategy through the use of the severe accident management guidelines, the emergency plan, the emergency operating procedures, and site survey monitoring that support modification of emergency plan protective action recommendations.

Therefore, the relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TSs, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2 — The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TSs, will not result in any failure mode not previously analyzed. The hydrogen and oxygen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen and oxygen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 — The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TSs, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Category 2 Oxygen Monitors Are Adequate To Verify the Status of an Inerted Containment.

Therefore, this change does not involve a significant reduction in the margin of safety. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related oxygen monitors. Removal of hydrogen and oxygen monitoring from TSs will not result in a significant reduction in their functionality, reliability, and availability.

Based on the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: Allen G. Howe.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: September 1, 2004.

Description of amendment request: The proposed amendment would delete Technical Specification (TS) 6.6.A, ''Occupational Radiation Exposure Report,'' and TS 6.6.B, ''Monthly Operating Reports.''

The NRC staff issued a notice of availability of a model no significant

hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated September 1, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates the TS reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: Allen G. Howe.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: April 30, 2004.

Description of amendment request: The proposed change allows entry into a mode or other specified condition in the applicability of a technical specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TSs would be eliminated, several notes or specific exceptions are revised to reflect the related changes to LCO 3.0.4, and Surveillance Requirement (SR) 3.0.4 is revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated April 30, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Thomas S. O'Neill, Associate and General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Daniel Collins, Acting.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: August 2, 2004.

Description of amendment request: The proposed amendment would delete Technical Specification (TS) Section 6.8.4, ''Post Accident Sampling,'' and the related requirements to maintain a Post-Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, Revision 3, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Access Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the U.S. Nuclear Regulatory Commission's (NRC) lessons learned from the accident that occurred at TMI Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on March 3, 2003 (68 FR 10052) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in a license amendment application in the **Federal Register** on May 13, 2003 (68 FR 25664). The licensee affirmed the applicability of the following NSHC determination in its application dated August 2, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specification (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: April 13, 2004.

Description of amendment requests: The proposed amendments would change the licensing basis as described in the Updated Final Safety Analysis Report to allow the use of a reinforcing bar (rebar) yield strength value based on measured material properties, as documented in the licensee rebar acceptance tests, in control rod drive missile shield structural calculations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No

Probability of Occurrence of an Accident Previously Evaluated

This is a change in the method of determining the acceptability of accommodating the pressure load following a loss-of-coolant accident. No physical changes are being made to the plant and no potential accident initiators are introduced by this change. Thus, the probability of the occurrence of any accident previously evaluated is not significantly increased.

Consequences of an Accident Previously Evaluated

There is reasonable assurance that the ability of control rod drive missile shields (missile shields) to maintain their structural capability and continue to function as a part of the divider barrier separating the lower containment from the upper containment is not impacted by this change. The data obtained from rebar acceptance test reports demonstrate that the missile shields have adequate strength to accommodate the load that would be imposed under assumed accident conditions. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The use of increased missile shield rebar yield strength for the missile shield structural capability under accident conditions does not alter the evaluation of the missile shields' structural capability during normal operation, the operational condition in which a new or different kind of accident would be initiated. The change does not physically alter plant components nor does it alter plant operation. The change does not adversely affect current system interfaces or create new interfaces that could result in an accident or malfunction of a different kind than previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No

The margin of safety for the missile shields is provided by the factors that are applied to the individual loads determining the load imposed on the missile shields under accident conditions. These code safety factors are sufficient to ensure that both anticipated and unanticipated loads can be withstood by the concrete structures. The use of yield strengths based on measured material properties as documented in the I&M [Indiana Michigan Power Company] rebar acceptance tests for the missile shield structural evaluation has no effect on the margin of safety provided by the load safety factors. I&M continues to use the same load factors that were used to license the Donald C. Cook Nuclear Plant.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 7, 2004.

Description of amendment request: The proposed amendment revises Fort Calhoun Station (FCS) Technical Specification (TS) 5.9.5, ''Core Operating Limits Report,'' such that it will read consistent with TS 5.6.5 of NUREG–1432, Standard Technical Specifications-Combustion Engineering Plants. In addition, the list of core reload analysis methodologies contained in TS 5.9.5b used to determine the core operating limits is updated to move many of these references to Omaha Public Power District (OPPD) core reload analysis methodology documents OPPD–NA–8301, 8302, and 8303. Several analytical method references that are no longer applicable to FCS are deleted from TS 5.9.5b; several references will remain, as they are not suitable for incorporation into the core reload analysis documents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes are primarily administrative in nature to achieve consistency with Standard Technical Specifications and to update the list of NRC reviewed and approved analytical methods used to develop core operating limits. Several of the analytical methods are no longer applicable to Fort Calhoun Station, Unit No. 1, (FCS) and thus are deleted from the Technical Specifications (TSs). Many of the topical reports currently referenced in TS 5.9.5b are more suitably referenced in the OPPD core reload methodology documents where they have been relocated.

The OPPD core reload methodology documents remain referenced in TS 5.9.5b and as such are subject to NRC review and approval. The relocation of the topical reports referenced in TS 5.9.5b to OPPD core reload methodology documents is an administrative change. In addition to the incorporation of references currently found in TS 5.9.5b, OPPD core reload methodology documents OPPD–NA–8301, 8302, and 8303 are revised to remove characters designating them as proprietary, and approved. This is an administrative change, as OPPD no longer considers the documents to be proprietary or topical reports. OPPD core reload methodology documents OPPD–NA–8301, 8302, and 8303 are enclosed for NRC review and approval [attached to the licensee's September 7, 2004, letter] of the changes noted above and incorporation of the CASMO–4 (C–4) computer code, which is described below.

OPPD is adding the C–4 code to OPPD–NA–8302, Reload Core Analysis Methodology, Neutronics Design Methods and Verification and will use the code for nuclear design analysis. This will allow the use of the C–4 and SIMULATE–3 (S–3) methodology to perform all steady-state pressurized water reactor (PWR) core physics analyses. The probability of occurrence of an accident previously evaluated will not be increased by the proposed change in the particular codes used for physics calculations for nuclear design analysis. The results of nuclear design analyses are used as inputs to the analysis of accidents that are evaluated in the Updated Safety Analysis Report (USAR). These inputs do not alter the physical characteristics or modes of operation of any system, structure, or component involved in the initiation of an accident. Thus, there is no significant increase in the probability of an accident previously evaluated as a result of this change.

The consequences of an accident evaluated in the USAR are affected by the value of inputs to the transient safety analysis. An extensive benchmark of C–4/S–3 predictions was performed with measured data using a variety of fuel designs and operating conditions in power reactors and critical experiments. The accuracy of C–4/S–3 is similar to, and sometimes better than, the accuracy of C–3/S–3. Furthermore, there is always the potential for the value of the nuclear design parameters to change solely as a result of the new core reload fuel core loading pattern. Regardless of the source of a change, an assessment is always made of changes to the nuclear design parameters with respect to their effects on the consequences of accidents previously evaluated in the USAR. Refueling is an anticipated activity, which is described in the USAR. If increased consequences are anticipated, compensatory actions are implemented to neutralize any expected increase in consequences. These compensatory actions include, but are not limited to, crediting any existing margins in the analysis or redefining the operating envelope to avoid increased consequences. Thus, the nuclear design parameters are intermediate results and by themselves will not result in an increase in the consequence of an accident evaluated in the USAR.

Therefore, the use of the C–4/S–3 code package, which will perform the same functions as the C–3/S–3 codes with similar accuracy, does not significantly increase the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes are primarily administrative in nature. The changes achieve consistency with Standard Technical Specifications, update the list of NRC reviewed and approved analytical methods used to develop core operating limits by deleting certain analytical methods no longer applicable to FCS and relocating many of the remainder to OPPD core reload analysis methodology documents, and make minor administrative changes to OPPD core reload analysis documents referenced in TS 5.9.5b. OPPD intends to utilize the C–4/S–3 code package for nuclear design analysis. The proposed amendment would add the C–4 code to OPPD core reload analysis methodology document OPPD–NA–8302.

The possibility for a new or different kind of accident evaluated previously in the USAR will not be created by the proposed administrative changes or the change to the particular codes used for physics calculations for nuclear design analyses. The change involves adding the Studsvik C–4 code to OPPD core reload analysis methodology document OPPD–NA–8302. The C–4 code is an update to the C–3 code currently approved for use at FCS. The results of nuclear design analyses are used as inputs to the analysis of accidents that are evaluated in the USAR. These inputs do not alter the physical characteristics or modes of operation of any system, structure or component involved in the initiation of an accident. Therefore, these administrative changes and the addition of the C–4 code, which will perform the same functions, as the C–3 code with similar accuracy, does not increase the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in a margin of safety. The margin of safety as defined in the basis for any technical specification will not be reduced nor increased by the proposed administrative changes or the change to the codes used for physics calculations for nuclear design analyses. The changes achieve consistency with Standard Technical Specifications, update the list of NRC approved analytical methods used to develop core operating limits by deleting certain analytical methods no longer applicable to FCS and relocating many of the remainder to OPPD core reload analysis methodology documents, and make minor administrative changes to OPPD core reload analysis documents referenced in TS 5.9.5b.

The change involves the addition of the Studsvik C–4 code to OPPD core reload analysis methodologies for nuclear design analysis. Extensive benchmarking of the C–4/S–3 computer codes has demonstrated that the values of those parameters used in the safety analysis are not significantly changed relative to the values obtained using the NRC approved C–3/S–3 computer codes. For any changes in the calculated values that do occur, the application of appropriate biases and uncertainties ensures that the current margin of safety is maintained. Specifically, use of these code specific biases and uncertainties in safety evaluations continues to provide the same statistical assurance that the values of the nuclear parameters used in the safety analysis are conservative with respect to the actual values on at least a 95/95 probability/confidence basis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert Gramm.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: April 15, 2004, as supplemented August 11, 2004.

Description of amendment request: The amendment request proposes to revise the Salem Unit No. 1 Technical Specifications (TSs) to reflect the addition of the chilled water system to provide cooling water to the containment fan cooling units (CFCUs). The amendment request also proposes to revise a non-conservative Action Statement for Salem Unit Nos. 1 and 2 that allows three containment cooling fans to be inoperable under certain conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

Containment cooling fans remove containment heat loads under both normal and accident conditions. As such, they have no impact on the probability of occurrence of any previously evaluated accidents, although they do function to mitigate accident consequences. With regard to accident consequences, revised containment response analysis has been performed with the proposed changes of this license amendment. This analysis demonstrates that containment pressure and temperature limits continue to be met as further described below.

The addition of the non-safety related chilled water system does not represent an increase in the consequences of an accident since, at the onset of the accident, the chilled water supply is automatically isolated on the resulting safety injection signal and the safety related Service Water System supplies the cooling method to remove the containment heat loads, as presently analyzed. Analysis has been performed to evaluate any potential failures that could prevent the Containment Cooling System to perform [sic] its safety related functions. Redundancy in the chilled water system and transfer to service water during an accident are incorporated in the design. In addition, as a conservative measure, an action statement has been added to require prompt action to restore containment cooling or commence a unit shutdown in the event of an unexpected condition that results in the loss of normal containment cooling capability.

The accidents previously evaluated that are associated with containment heat removal are design basis loss-of-coolant accident (LOCA) and main steam line break (MSLB) accident. In the case of the design basis LOCA, the revised analysis demonstrates that all cases resulted in a peak containment pressure that was less than 47 psig. In addition, all long-term cases were well below 50% of the peak value within 24 hours. Based on the results, applicable criteria for Salem Unit 1 have been met and therefore, the consequences of previously evaluated accidents are not increased.

The proposed change to the non-conservative TS 3.6.2.3 Action b, maintains that five CFCUs remain operable to ensure that, upon a single failure, a minimum of three CFCUs will provide the required containment and air mixing which is consistent with the current Salem Dose Analysis.

Consequently, the proposed license amendment does not increase the probability of occurrence or the consequences of accidents previously evaluated for Salem.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Response: No.

Containment cooling fans remove containment heat loads under both normal and accident conditions. The containment cooling fans are presently part of the plant protection equipment and have been analyzed and evaluated as to their function and effectiveness. Consequently, they cannot create the possibility of any new or different kinds of accidents from any previously evaluated. The addition of a chilled water system that is isolated on an accident condition does not create a new or different kind of accident. The accidents analyzed are the LOCA and MSLB, which are part of the Salem Design Bases.

The proposed change to the non-conservative TS 3.6.2.3 Action b, maintains that five CFCUs remain operable to ensure that, upon a single failure, a minimum of

three CFCUs will provide the required containment and air mixing which is consistent with the current Salem Dose Analysis.

Therefore, the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety pertinent to the proposed changes is the dose consequences resulting from a design basis LOCA. Containment cooling fans affect potential dose consequences in that they assist in maintaining containment pressure and temperature within design limits. By maintaining these limits, three critical functions are performed. These are:

a. Containment integrity is assured by maintaining pressure below the containment design limit.

b. By maintaining pressure below 47 psig, leakage of containment atmosphere to the surrounding environment is retained within the leakage testing results of 10 CFR 50, Appendix J. In this case, the Appendix J testing procedures provide the margin of safety, as long as the limiting pressure (47 psig) is not exceeded.

c. By maintaining containment temperature within limits, the qualification of vital electrical equipment to function in the post-accident containment environment is assured. In this case, the margin of safety is provided by the testing and evaluation procedures implemented by 10 CFR 50.49.

In addition, as a conservative measure, an action statement has been added to require prompt action to restore containment cooling or commence a unit shutdown in the event of an unexpected condition that results in the loss of normal containment cooling capability.

The proposed change to the non-conservative TS 3.6.2.3 Action b, maintains that five CFCUs remain operable to ensure that, upon a single failure, a minimum of three CFCUs will provide the required containment and air mixing which is consistent with the current Salem Dose Analysis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: July 26, 2004.

Description of amendment request: The proposed amendment would delete Technical Specification (TS) 5.6.1, ''Occupational Radiation Exposure Report,'' and TS 5.6.4, ''Monthly Operating Reports.''

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated July 26, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1 The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

The proposed change eliminates the TS reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the Technical Specification reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2 The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3 The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety?

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the NRC staff proposes to determine that the requested change does not involve significance hazards consideration.

Attorney for licensee: Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW., Suite 1000 South, Washington, DC 20005.

NRC Section Chief: Richard J. Laufer.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station (VCSNS), Unit No. 1, Fairfield County, South Carolina

Date of amendment request: August 24, 2004.

Description of amendment request: The proposed change will revise Surveillance Requirements (SRs) 4.7. 1.2.a.1 and 4.7 .1.2.a.2 to reflect a more representative model of the Emergency Feedwater (EFW) System. The new model has established new technical specification (TS) acceptance criteria to assure the design requirements of the system are met. These required characteristics are more stringent than those currently in the VCSNS TSs for this system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change represents a more restrictive surveillance requirement than currently exists for TS Surveillance 4.7. 1.2.a.1 and 4.7 .1.2.a.2. These proposed surveillance acceptance criteria changes will ensure that the motor driven EFW pumps and the turbine driven EFW pump can continue to perform their design function. There are no changes planned to any plant installed hardware or software and normal plant operations will not be impacted.

The probability or consequences of accidents previously evaluated in the VCSNS FSAR [Final Safety Analysis Report] are unaffected by this proposed change because there is no change to any equipment response or accident mitigation scenario. There are no additional challenges to fission product barrier integrity. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated? The proposed change involves the revision of the Surveillance Requirements for the EFW system. The revised requirements are more restrictive to insure compliance with the design basis of the system. Changes to the system model require changes to the SR acceptance criteria in order to maintain the performance level assumed in the safety analysis.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does this change involve a significant reduction in margin of Safety?

The proposed change will have no affect on the availability, operability, or performance of the safety-related systems and components. A change to the SR is proposed, however, the proposed change is more restrictive than the current SR. The more restrictive criteria inherently include a 5 gpm leak tolerance for the EFW flow control valves. This represents a built in margin for the pump head requirement when the flow control valve leakage is determined to be less than 5 gpm. Therefore, the proposed change does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: Mary Jane Ross-Lee, Acting.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia; Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama; Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: July 28, 2004.

Description of amendment request: The proposed amendment would delete Technical Specification (TS) 5.6.1, ''Occupational Radiation Exposure Report,'' and TS 5.6.4, ''Monthly Operating Reports.''

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated July 28, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1 The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

The proposed change eliminates the TS reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2 The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3 The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety?

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Mary Jane Ross-Lee, Acting.

Southern Nuclear Operating Company (SNC), Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: July 20, 2004.

Description of amendment request: The proposed amendments would make various changes to the technical specifications (TSs) associated with the Plant Hatch DC electrical system consistent with Technical Specification Task Force (TSTF) change traveler TSTF–360, including specific action and increased completion time for an inoperable battery charger, increase the completion time for an inoperable station service battery from 2 to 12 hours, relocate preventive maintenance surveillance requirements (SRs) to licensee controlled programs, provide alternate testing criteria for battery charger testing, replace battery specific gravity monitoring with float current monitoring, relocate and create a Section 5.5 program to reference actions for cell voltage and electrolyte level, and provide specific actions and increased completion times for out-of-limits conditions for certain battery parameters.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This is a proposed change to the DC system Technical Specifications. No physical changes are being proposed to any system designed to prevent a previously evaluated accident, such as a loss of coolant accident with a loss of offsite power.

This proposed TS change provides specific completion times for certain inoperable DC components, and relocates some surveillance requirements to owner controlled programs. Additionally, monitoring of specific gravity will be replaced with float current monitoring, and some Action levels for cell voltage and electrolyte level are relocated to owner controlled programs.

The completion time for battery charger inoperability is increased to 7 days; however, only after verification that the associated battery is fully operable, without such verification, the 7 day completion time is not used. Thus, adequate DC to support design basis events is ensured.

Increasing the station service battery out of service time from 2 to 12 hours will allow more time for proper maintenance to repair a faulty battery. However, the 12 hour out of service time is still a very restrictive time and so the probability of an event where the battery would be needed within this 12 hour time frame is very low. In fact, a probability risk assessment of the increased out of service time has been performed and it fell within the criteria of Reg Guide 1.174 and 1.177.

The relocation of certain SRs and action levels is done for surveillances and parameter action levels that are more intended to monitor and maintain long term

component performance. These relocated items are not meant as clear levels at which the DC components can no longer be considered operable. Those that are remain in the TS. Additionally, this particular owner controlled program will be referenced in proposed Section 5.5.13 of the TS. This commitment to the program will insure that the DC system will continue to be adequately monitored and maintained.

Therefore, this proposed change to the TS ensures that the DC system will be able to provide its safety function. The probability and consequences of a previously evaluated accident are thus not increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

None of the DC components will be physically altered. Furthermore, the design bases for the DC distribution systems, batteries and chargers is not changing. Although some surveillance requirements are being relocated and one (specific gravity monitoring) is being eliminated, DC system components will still be adequately surveilled and maintained. Therefore, no, new modes of operation or failure are introduced by the proposed TS change and therefore, the possibility of a new type event is not created.

3. The proposed change does not involve a significant reduction in the margin of safety.

The design functions of the DC system are unchanged. The proposed TS changes relocate many surveillance requirements and action levels to owner controlled programs. However, the owner controlled program is referenced in the new proposed Section 5.5.13 of the TS. The SNC commitment to this program will continue to ensure that the DC system is adequately monitored, surveilled, and maintained to insure that it can perform its safety function when called upon.

The addition of a 7 day completion time for the battery chargers can be used only if adequate battery capacity is verified. Thus, the DC system is capable of performing its safety function throughout the 7 day completion time.

Increasing the allowed out of service time for the station service batteries does not result in a significant reduction in the margin of safety since the proposed 12 hour time limit is still a very short time. Probabilistic risk analysis shows that the core damage frequency and large early release fractions are within the guidelines of Reg Guides 1.174 and 1.177.

Elimination of specific gravity surveillance is acceptable since the float current monitoring adequately replaces it.

For the above reasons, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Mary Jane Ross-Lee, Acting.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: July 2, 2004 (TS–449).

Description of amendment request: The proposed amendment would delete Technical Specification (TS) 5.6.1, ''Occupational Radiation Exposure Report,'' and TS 5.6.4, ''Monthly Operating Reports.''

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated July 2, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1 The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

The proposed change eliminates the TS reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the Technical Specification reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2 The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3 The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety?

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the requested change does not involve significance hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Michael L. Marshall (Acting).

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: August 12, 2004.

Description of amendment request: The proposed Technical Specification change will revise Surveillance Requirement 4.7.8.d.3 by removing the vacuum relief flow portion. The proposed revision removes criteria from the surveillance that is not necessary to verify the operability of the Auxiliary Building Gas Treatment System (ABGTS). The bases associated with the ABGTS will be revised to remove discussions regarding the vacuum relief flow portion of this surveillance as part of this effort.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change removes an overly restrictive criterion for vacuum relief flow as part of the ABGTS operability verification. This criterion is not required for the verification of ABGTS operability and therefore, the removal does not reduce the associated safety function. No system modification or operating practices are changed by the proposed revision. The accident mitigation functions of the ABGTS will not be adversely affected by the proposed removal and offsite dose potential is not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change does not result in the alteration of plant equipment or components or the modification of operating requirements for plant systems. Additionally, the ABGTS functions serve to mitigate accident conditions and are not considered a source for accident generation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed removal of an unnecessary criterion from the ABGTS surveillance will not result in a change to plant setpoints that function to maintain the safety margins. The ABGTS will continue to provide the required negative pressure conditions for the auxiliary building during accident conditions to maintain acceptable dose conditions. The actuation of safety features for accident mitigation will not be affected by the proposed changes. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The United States Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Acting Section Chief: Michael Marshall, Jr.

Tennessee Valley Authority (TVA), Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: August 18, 2004.

Description of amendment request: The proposed amendment would rename the Trip Setpoint column of Technical Specification (TS) Tables 2.2–1 and 3.3–4, remove the inequality signs for the trip setpoint values as appropriate, and revise the inequality representation for the allowable values, as needed. This proposed amendment is a revision to a previous amendment request dated November 15, 2002 (ADAMS Accession No. ML023290477), that supersedes the original request in its entirety.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revisions for the nominal trip setpoint representation are administrative changes that will not impact the application of the reactor trip or ESF [engineered safety feature] actuation system instrumentation requirements. This is based on the setpoint requirements being applied without change, as well as the Avs [allowable values], in accordance with the current setpoint methodology. The removal of the inequalities associated with the trip setpoint values will be more appropriate for the use of nominal setpoint values but will not differ in application from the setpoint methodology utilized by TVA. Deletion of the nominal terminology associated with overtemperature delta temperature average temperature at rated thermal power (T′) provides a better representation of the limit associated with this value. In addition, this change will not alter plant equipment or operating practices. Therefore, the implementation of these changes will not increase the probability or consequences of an accident.

The revision of the reactor coolant pump (RCP) underfrequency, intermediate range neutron flux P–6, and fuel storage pool area radiation monitor trip setpoints and the Avs for the RCP underfrequency, intermediate range neutron flux P–6, and undervoltage has been evaluated and the results are documented in approved calculations. These calculations verify that the revised values are acceptable in accordance with appropriate calculation methodologies and that they will continue to support the accident analysis. These revisions will not require changes to the instrumentation settings currently being used or the methods for maintaining them. The offsite dose potential will be reduced because the proposed TS values are more conservative and will ensure the adequacy of designed safety functions to limit the release of radioactivity. Therefore, the proposed revision of these values will not significantly increase the probability or consequences of an accident.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revision of the nominal trip setpoint representation and elimination of the nominal nomenclature, as well as the revised setpoint values and Avs will not alter the plant configuration or functions. The revised setpoints and the proposed operability limits will continue to provide acceptable initiation of safety functions for the mitigation of postulated accidents as required by the design basis. The primary function of the reactor protection system, the ESF actuation system, and the radiation monitoring function is to initiate accident mitigation functions. These functions are not considered to be initiators of postulated accidents. The proposed changes do not create the possibility of a new or different kind of accident because the design functions are not altered and the proposed values meet the accident analysis requirements for accident mitigation.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The setpoint and Av revisions proposed in this request were evaluated and found to be acceptable without impact to the safety limits required for the associated functions. The nominal trip setpoint representation change and the elimination of inappropriate nominal indications do not alter the TS functions or their application and will not require changes to design settings. Plant systems will continue to be actuated for those plant conditions that require the initiation of accident mitigation functions. The margin of safety is not reduced because the proposed conservative changes to the Av and setpoint representations will not change design functions and the initiation of accident mitigation functions for appropriate plant conditions is ensured.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Michael L. Marshall, Jr. (Acting).

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has

made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: August 22, 2003.

Brief description of amendments: The amendments authorize revision of the Updated Final Safety Analysis Report to incorporate the description of the approved change to the maximum fuel pin pressurization criteria used in the evaluation of the design basis fuel-handling accident as described in the amendment application of August 22, 2003.

Date of issuance: September 27, 2004.

Effective date: September 27, 2004, and shall be implemented within 60 days of the date of issuance.

Amendment Nos.: Unit 1–153, Unit 2–153, Unit 3–153.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments authorize the revision of the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** December 9, 2003 (68 FR 68656). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 27, 2004.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: May 10, 2002, as supplemented March 12, 2003, April 10, 2003, March 5, 2004, and July 22, 2004.

Brief description of amendment: The amendment approves full implementation of the alternative source term, with the exception of the loss-of-coolant accident.

Date of issuance: September 24, 2004.

Effective date: September 24, 2004.

Amendment No.: 201.

Renewed Facility Operating License No. DPR–23: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 1, 2003 (68 FR 15758). The April 10, 2003, March 5, 2004, and July 22, 2004, supplements contained clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 2004.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: September 26, 2002, as supplemented June 2, 2003, May 7, June 18, and August 24, 2004.

Brief description of amendment: The amendment revised the technical specifications (TSs) to allow relaxation of containment operability requirements while handling irradiated fuel and core alterations.

Date of issuance: September 20, 2004.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 284.

Facility Operating License No. DPR–65: The amendment revised the TSs.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68731). The supplements dated June 2, 2003, May 7, June 18, and August 24, 2004 contained clarifying information and did not change the staff's proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 2004.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: May 9, 2002, as supplemented by letter dated June 11, 2003, and August 18 and September 22, 2004.

Brief description of amendments: The amendments approve changes to the Updated Final Safety Analysis Report for Catawba, Units 1 and 2 to eliminate the single failure of either of the 125 VDC Distribution Centers, EDE or EDF, from the design-basis steam generator tube rupture accident analyses.

Date of issuance: September 24, 2004.

Effective date: As of the date of issuance and shall be implemented with the next update of the Safety Analysis Report in accordance with 10 CFR 50.71(e)

Amendment Nos.: 217, 211.

Renewed Facility Operating License Nos. NPF–35 and NPF–52: Amendments revise the Licensing Basis.

Date of initial notice in ***Federal Register:*** July 23, 2002 (67 FR 48215). The supplements dated June 11, 2003, and August 18 and September 22, 2004, provided clarifying information that did not change the scope of the May 9, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 24, 2004.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: June 30, 2003, as supplemented by letters dated November 20, 2003, February 27, 2004, and September 10, 2004.

Brief description of amendment: The amendment (1) reorganizes the Arkansas Nuclear One, Unit No. 2 (ANO–2) Technical Specification (TS) Section 6.0, Administrative Controls, (2) modifies the ANO–2 Facility Operating License, and Actions and Surveillance Requirements (SRs) of various other TSs, to support the reorganization of Section 6.0, and (3) modifies several Actions and SRs that are related to systems that are shared by ANO–2 and Arkansas Nuclear One, Unit No. 1.

Date of issuance: September 28, 2004.

Effective date: As of the date of issuance to be implemented within 120 days from the date of issuance.

Amendment No.: 255.

Facility Operating License No. NPF–6: Amendment revises the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** December 9, 2003 (68 FR 68663). The supplements dated February 27, 2004, and September 10, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 2004.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: November 25, 2002, as supplemented by letters dated May 14, 2003, September 29, 2003, and March 25, 2004.

Brief description of amendment: The proposed amendment would revise Technical Specification 3.9.11, ''Storage Pool Water Level'' and TS 5.6.1, ''Fuel Storage—Criticality.'' This amendment permits St. Lucie Unit 1 to credit soluble boron, fuel loading restrictions, and control element assemblies in the spent fuel pool criticality analyses and eliminate the need to credit Boraflex neutron absorbing material for reactivity control.

Date of Issuance: September 23, 2004.

Effective Date: As of the date of issuance and shall be implemented by September 30, 2005.

Amendment No.: 193.

Renewed Facility Operating License No. DPR–67: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 7, 2003 (68 FR 806). The May 14, 2003, September 29, 2003, and March 25, 2004, supplements did not affect the original proposed no significant hazards determination, or expand the scope of the request as noticed in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 2004.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: August 25, 2003, as supplemented by letters dated February 9, February 23, March 25, April 15, May 20, and July 29, 2004.

Description of amendment request: The amendment revised the Technical Specifications (TSs) to extend the emergency diesel generator allowed outage time from 72 hours to a period of 14 days, and to allow extension of the current two-hour time requirement to four hours for verification of redundant component operability. These changes are in support of installing a non-safety-related supplemental emergency power system. The Bases of the affected TSs will be modified to address the changes.

Date of issuance: September 21, 2004.

Effective date: As of its date of issuance, and shall be implemented within 30 days.

Amendment No.: 97.

Facility Operating License No. NPF–86: The amendment revised the TSS.

Date of initial notice in ***Federal Register:*** December 29, 2003 (68 FR 68669). The supplements dated February 9, February 23, March 25, April 15, May 20, and July 29, 2004, did not change the staff's proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 21, 2004.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: February 14, 2004, as supplemented July 26, 2004.

Brief description of amendments: The amendments modify technical specification (TS) 3.9.2 limiting condition for operation, delete TS surveillance requirements (SRs) 4.9.2.a and 4.9.2.b for the Source Range Neutron Flux Monitor channel functional test, revise SR 4.9.2.c for the channel check test, and add a requirement to perform a channel calibration every 18 months as well as revise TS 4.10.4.2 and 4.10.3.2 (Units 1 and 2 respectively) for Intermediate and Power Range channel functional test.

Date of issuance: September 23, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 283, 267.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 11, 2004 (69 FR 26191).

The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 23, 2004.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: May 25, 2004, as supplemented August 6, 2004.

Brief description of amendment: The amendment revises technical specification (TS) 3.10.f.2 to add an allowed outage time for the individual rod position indication (IRPI) system of 24 hours with more than one IRPI group inoperable and adds the definition of ''immediately'' to TS Section 1.0.

Date of issuance: September 22, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 176.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 6, 2004 (69 FR 40675).

The supplement dated August 6, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 2004

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: July 7, 2003, as supplemented March 17, May 18, and August 18, 2004.

Brief description of amendment: The amendment adds Technical Specification Section 3.3.e.1.A.3, which provides requirements for turbine building service water header isolation logic.

Date of issuance: September 24, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 177.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 5, 2003 (68 FR 46244).

The supplements dated March 17, May 18, and August 18, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 2004.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: July 24, 2003.

Brief description of amendments: The amendments revise Technical Specification (TS) 3.8.4, ''DC Sources—Operating,'' TS 3.8.5, ''DC Sources—Shutdown,'' and TS 3.8.6, ''Battery Cell Parameters,'' and add a new TS 5.5.17, ''Battery Monitoring and Maintenance Program.'' The changes adopt in part the NRC-approved Technical Specification Task Force (TSTF–360, Revision 1, ''DC Electrical Rewrite.''

Date of issuance: September 20, 2004.

Effective date: September 20, 2004, and shall be implemented within 120 days from the date of issuance. The licensee shall reflect the relocation of TS requirements to licensee-controlled programs and the TS Bases, as described in the licensee's letter dated July 24, 2003, and the NRC safety evaluation attached to the amendment, in the next scheduled update of the Final Safety Analysis Report Update submitted pursuant to 10 CFR 50.71(e).

Amendment Nos.: Unit 1—172; Unit 2—174.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 2, 2003 (68 FR 52236).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 20, 2004.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2 (SSES–2), Luzerne County, Pennsylvania

Date of application for amendments: September 16, 2003, as supplemented by letter dated April 27, 2004.

Brief description of amendments: The amendment revised the values of the Safety Limit for Minimum Critical Power Ratio in TS 2.1.1.2 for current SSES–2 Cycle 12 mid-cycle two-recirculation-loop and single-recirculation-loop operation.

Date of issuance: September 21, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 191.

Facility Operating License No. NPF–22: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 28, 2003 (68 FR 61480). The supplement dated April 27, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 21, 2004.

No significant hazards consideration comments received: No.

PSEG Nuclear, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: July 29, 2002, as supplemented by letters dated March 28, 2003, May 1, 2003, and August 20, 2004.

Brief description of amendments: The amendments modify the Salem Nuclear Generating Station, Unit Nos. 1 and 2, Technical Specifications (TSs) requirements for containment closure associated with the equipment hatch and personnel airlocks during Core Alterations and movement of irradiated fuel within the containment. The change allows the equipment hatch and the personnel airlocks to remain open during fuel movement inside containment provided administrative controls are in place to ensure the closure of the equipment hatch and personnel airlock following a fuel handling accident within the containment building. In addition, the associated TS Bases are revised.

Date of issuance: September 16, 2004.

Effective date: As of the date of issuance, and shall be implemented within 90 days.

Amendment Nos.: 263 and 245.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the TSs.

Date of initial notice in ***Federal Register:*** August 20, 2002 (67 FR 53989). The licensee's supplements dated March 28, 2003, May 1, 2003, and August 20, 2004, provided clarifying information that did not change the scope of the proposed amendments as described in the original notice of proposed action published in the **Federal Register**, and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 16, 2004.

No significant hazards consideration comments received: No.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: April 9, 2002, as supplemented January 10, 2003, February 24, 2004, and August 27, 2004.

Brief description of amendment: The amendment revised the Ginna Improved Technical Specification with regards to: relocating figures associated with Core Safety Limits to the Core Operating Limits Report (COLR), relocating Overtemperture ΔT and Overpower ΔT parameters to the COLR, and replacing current trip setpoints for the Reactor Protection System and the Engineered Safety Feature Actuation System with Limiting Safety System Settings in accordance with the Instrument Society of America Standard 67.04, Part 2.

Date of issuance: September 22, 2004.

Effective date: As of the date of issuance to be implemented within 1 year.

Amendment No.: 85.

Renewed Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 28, 2002 (67 FR 36933). The supplements dated January 10, 2003, February 24, 2004 and August 27, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 2004.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket No. 50–206, San Onofre Nuclear Generating Station, Unit 1, San Diego County, California

Date of application for amendment: January 28, 2004, supplemented by a letter dated July 23, 2004.

Brief description of amendment: The amendment revises the SONGS Unit 1 License and Permanently Defueled Technical Specifications to modify or remove operational and administrative requirements that are not applicable upon the transfer of all spent fuel from the spent fuel pool into the SONGS dry cask storage Independent Spent Fuel Storage Installation.

Date of issuance: September 21, 2004.

Effective date: As of the date that all reactor fuel has been permanently removed from the spent fuel pool and stored in an Independent Spent Fuel Storage Installation. The license amendment shall be implemented within 30 days of its effective date.

Amendment No.: 163.

Facility Operating License No. DPR–13: This amendment revises both the license and the technical specifications.

Date of initial notice in ***Federal Register:*** March 30, 2004 (69 FR 16623). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 21, 2004.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: July 31, 2002 as supplemented by letters dated December 9, 2002, February 12, 2003, March 26, 2003, July 11, 2003, July 17, 2003, May 17, 2004, July 2, 2004, August 24, 2004 and September 17, 2004.

Description of amendment request: The amendments requested full implementation of an alternative source term (AST) methodology for the Units 1, 2, and 3 operating licenses and design bases. The amendments adopt the AST methodology by revising the current accident source term and replacing it with an accident source term as prescribed in 10 CFR 50.67. The submittals also proposed to revise and/or remove the Technical Specification (TS) Sections associated with control room emergency ventilation (CREV), standby gas treatment (SGT), standby liquid control (SLC), and secondary containment systems. Additionally, the submittals requested modification of the licensing and design basis to reflect the application of the AST methodology and the function of the SLC system, and deletion of a license condition for Units 2 and 3.

The supplements to the original application included the withdrawal of the request to delete one of the TS Sections described above, associated with the absorption of elemental iodine by the SGT and CREV systems charcoal filters. Also the supplements added a new TS Section to require verification that the minimum fuel decay period has passed prior to moving fuel after the reactor is shut down.

Date of issuance: September 27, 2004.

Effective date: Date of issuance, to be implemented prior to restart of Unit 1, and within 120 days for Units 2 and 3.

Amendment Nos.: 251, 290 and 249.

Facility Operating License Nos. *DPR–33, DPR–52, and DPR–68:* Amendments revised the Operating Licenses and TSs.

Date of initial notice in ***Federal Register:*** October 15, 2002 (67 FR 63697). The supplements dated December 9, 2002, February 12, March 26, July 11, and July 17, 2003, provided information that changed the scope of the original request, therefore another **Federal Register** notice was published on April 27, 2004 (69 FR 22883). However, the supplements dated May 17, July 2, August 24, and September 17, 2004, provided clarifying information that did not expand the scope of the revised request or the proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 27, 2004.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: March 5, 2004.

Brief description of amendment: The amendments delete surveillance requirements to perform certain channel functional tests of the source range, intermediate, and power range neutron flux monitors. These amendments eliminate extraneous and unnecessary performance of these surveillances.

Date of issuance: September 20, 2004.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 295 and 285.

Facility Operating License No. DPR–77 and DPR–79: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 13, 2004 (69 FR 19576). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 2004.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: March 5, 2004.

Brief description of amendment: The amendments eliminate the requirements in the technical specifications associated with hydrogen recombiners and hydrogen monitors.

Date of issuance: September 20, 2004.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 296 and 286.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the technical specifications.

Date of initial notice in ***Federal Register:*** April 13, 2004 (69 FR 19576).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 20, 2004.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 1st day of October, 2004.

For the Nuclear Regulatory Commission.

William H. Ruland,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–22544 Filed 10–8–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50478; File No. SR–NASD–2004–107]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of a Proposed Rule Change Relating to Computer Generated Quoting in Exchange-Listed Securities

September 30, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to eliminate NASD Rule 6330(d) (''Obligations of CQS Market Makers'') to allow market makers to engage in Computer Generated Quoting (''CGQ'') in exchange-listed securities. The text of the proposed rule change is below. New text is in italics. Deleted text is in brackets.

* * * * *

6330. Obligations of CQS Market Makers

(a)–(c) No Change.

[(d) Computer-Generated Quotations]

[(1) General Prohibition—Except as provided below, this rule prohibits the automatic updating or tracking of inside quotations in CQS by computer-generated quote systems. This ban is necessary to offset the negative impact on the capacity and operation of Nasdaq systems regarding certain systems techniques that track changes to the inside quotation and automatically react by generating another quote to keep the market maker's quote away from the best market, without any cognizable human intervention.]

[(2) Exceptions to the General Prohibition

Automated updating of quotations is permitted when:

(A) The update is in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size);

(B) It requires a physical, cognizable entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to a Nasdaq system);

(C) The update is to reflect the receipt, execution, or cancellation of a customer limit order;

(D) It is used to expose a customer's market or marketable limit order for price improvement opportunities; or

(E) It is used to equal or improve either or both sides of the national best bid or offer (''NBBO''), or add size to the NBBO.]

([e]*d*) Minimum Price Variation for Decimal-based Quotations

(1) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Nasdaq proposes to eliminate NASD Rule 6330(d), which governs CGQ in exchange-listed securities. Currently, NASD Rule 6330 prohibits the practice of automatically, and without cognizable human intervention, updating a market maker's quote to keep the market maker away from the inside market. NASD Rule 6330(d)(2) contains five exceptions to the general prohibition, including exceptions for conduct that is consistent with the Commission's Order Handling Rules, and for CGQ that equals or improves either or both sides of the national best bid or offer (''NBBO'') or adds size to the NBBO.

The limitations contained in NASD Rule 6330(d) were originally implemented because of capacity constraints that Nasdaq believes no longer persist. Under recent procedures implemented by the Consolidated Tape Association,[3] Nasdaq now has the opportunity to request additional capacity to accommodate increased quoting. Since Nasdaq would bear the expense of the additional capacity under the new procedures, Nasdaq should be free to increase capacity without objection from the other markets that quote and trade exchange-listed securities.

Nasdaq believes that the current restriction on CGQ in exchange-listed securities not only reduces transparency in the National Market System, but also places a burden on highly automated participants that may wish to add liquidity in Nasdaq on a proprietary basis. Firms posting bids and offers using the Nasdaq Market Center are disadvantaged relative to firms using the other market centers, such as the regional stock exchanges and electronic communications networks.

Under the proposal, market makers would be able to engage in CGQ without limitations. Broad use of CGQ has been permitted for two years in Nasdaq-listed securities[4] and has benefited investors by improving liquidity, transparency, and order interaction in the Nasdaq Market Center. Market participants have developed sophisticated systems that generate quote updates through automated means. These market makers engage in trading strategies in which their quoted prices are based on several factors, such as the last sale, bids, offers, and sizes, where available, on stocks, futures and options, and certain statistically derived relationships among these instruments.

Compliance With ITS Plan

Nasdaq believes that the proposed rule change is consistent with the Act and with the Intermarket Trading System (''ITS'') Plan. Nasdaq has examined the language in the ITS Plan and believes that nothing in the ITS Plan prohibits auto-quoting in exchange-listed securities. Subsection 8(d)(ii) of the ITS Plan, titled ''Adoption of Trade-Through Rules,'' references, *inter alia*, the practice of furnishing bid-asked quotations that are generated by an automated quotation system (functionality Nasdaq refers to as CGQ). According to Nasdaq, the sole purpose of Subsection 8(d)(ii) of the ITS Plan was to implement the trade-through rule, and not to banish entirely the whole practice of CGQ in exchange-listed securities. Nasdaq states that Subsection 8(d)(ii) of the ITS Plan establishes that CGQ for more than 100 shares should be prohibited only inasmuch as CGQ might prevent the implementation of the trade-through rule. Nasdaq believes that, if CGQ does not prevent the implementation of the trade-through rule, then Subsection 8(d)(ii) of the ITS Plan, and the remaining sections of the ITS Plan, do not otherwise prohibit or restrict CGQ in exchange-listed securities.

Nasdaq believes that a contrary interpretation would be difficult to support both in the context of the ITS Plan as a whole and in the context of past experience. According to Nasdaq, it is hard to believe that if the signatories

[3] *See* Securities Exchange Act Release No. 47030 (December 18, 2002), 67 FR 78832 (December 26, 2002).

[4] *See* NASD IM–4613(c).

of the ITS Plan had actually intended to banish CGQ in exchange-listed securities entirely, they would have chosen to ''bury'' such a provision in Subsection 8(d)(ii) of the ITS Plan without any substantive discussion either in that Subsection or elsewhere within the document. Nasdaq notes that the ITS Plan runs for over a hundred pages, and that all of its important prohibitions and limitations on the ITS participants' conduct are carefully explained. Yet, according to Nasdaq, there is no section or subsection with the words ''computer generated quoting'' or ''auto-quoting'' in its title, there is no discussion whatsoever of this practice, and no substantive explanation or justification for banishing it is offered anywhere.

Nasdaq believes that there have always been public policy reasons to permit CGQ in exchange-listed securities. For example, Nasdaq states that beginning in February 2000 and every year thereafter, the Commission has granted the NASD an exemption to allow CGQ in ITS.[5] According to Nasdaq, each time the exemption was granted or extended, the Commission stated that, at least within the restrictions contained in the exemption, CGQ ''is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.'' Given these benefits of CGQ, Nasdaq does not believe that the ITS Plan could fairly or reasonably be construed as summarily prohibiting CGQ without any discussion.

Nasdaq believes that since CGQ does not automatically prevent the implementation of the trade-through rule, a total ban is not needed in order to implement the trade-through rule. For example, Nasdaq states that the trade-through rule is being observed even though CGQ in exchange-listed securities is currently permitted by Nasdaq (consistent with the Commission-granted exemptive relief referenced above). Nasdaq believes that this fact lends further support to its view of Subsection 8(d)(ii) of the ITS Plan as only prohibiting CGQ if and when CGQ prevents trade-through rule implementation.

Over the past several years Nasdaq has advocated and supported amending the ITS Plan to clarify its language and put this issue to rest. Nasdaq proposed, and the ITS Operating Committee (''ITSOC'') discussed and voted on a set of specific exceptions to a CGQ prohibition to be incorporated into the Plan. To date, no consensus for an amendment has been found.[6] Further, as time has passed and the markets have evolved, Nasdaq has come to believe, as it has mentioned at the last two ITSOC meetings, that there should be no restrictions on CGQ in the ITS Plan. It appears to Nasdaq that there are other exchanges participating in ITS that permit forms of CGQ without having requested an exemption from the Commission.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act[7] in general, and Section 15A(b)(6) of the Act,[8] which requires that the rules of the NASD foster cooperation and coordination with persons engaged in facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market. Nasdaq believes that permitting market makers to use these systems should have several benefits. According to Nasdaq, market makers will be able to utilize existing computer models, or develop new models, to automatically generate and update their quotes, which should enhance the price discovery process and allow members to increase the number of stocks in which they are registered as market makers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–107 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–107. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All

[5] *See e.g.*, letter from Alden S. Adkins, Commission, to Eugene A. Lopez, Nasdaq, dated December 31, 2002 (explaining Nasdaq's need for the exemption by stating that ''[c]ertain ITS Participants interpret this section [Subsection 8(d)(ii) of the ITS Plan] as preventing Participants from employing automated quotation tracking systems that auto-quote for more than 100 shares''). It is Nasdaq's opinion that the Commission has viewed the exemption as a prophylactic measure needed to address the interpretations by certain unnamed participants.

[6] A unanimous vote is required to amend the ITS Plan. *See* Subsection 4(c) of the ITS Plan.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(6).

comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–107 and should be submitted on or before November 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2571 Filed 10–8–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3629]

State of Georgia (Amendment #1)

In accordance with a notice received from the Department of Homeland Security ''Federal Emergency Management Agency—effective September 24, 2004, the above numbered declaration is hereby amended to include Dade, Miller, and Pickens as disaster areas due to damages caused by Hurricane Ivan occurring on September 14, 2004, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Decatur and Walker in the State of Georgia; DeKalb and Jackson Counties in the State of Alabama; and Hamilton and Marion Counties in the State of Tennessee may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared.

The economic injury disaster number assigned to Tennessee is 9AD300.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 17, 2004 and for economic injury the deadline is June 20, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 30, 2004.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–22860 Filed 10–8–04; 8:45 am]

BILLING CODE 8025–01–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4857]

60-Day Notice of Proposed Information Collection: DS–3035, J Visa Waiver Recommendation Application, OMB Control Number 1405–0135

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* J Visa Waiver Recommendation Application.
- *OMB Control Number:* 1405–0135.
- *Type of Request:* Extension of a currently approved collection.
- *Originating Office:* CA/VO.
- *Form Number:* DS–3035.
- *Respondents:* All J visa waiver applicants.
- *Estimated Number of Respondents:* 10,000 per year.
- *Estimated Number of Responses:* 10,000 per year.
- *Average Hours Per Response:* 2 hours.
- *Total Estimated Burden:* 20,000 hours per year.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to obtain or retain a benefit.

DATES: The Department will accept comments from the public up to 60 days from October 12, 2004.

ADDRESSES: Comments and questions should be directed to Brendan Mullarkey at the Department of State, Visa Office, who may be reached on 202–663–1166. You may submit comments by any of the following methods:

- E-mail: *mullarkeybp@state.gov*. You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD-ROM submissions): Department of State, Visa Office, 2401 E Street, NW., Washington, DC 20522–0106.
- Fax: 202–663–3897.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St., NW., L–703, Washington, DC 20522, who may be reached at 202–663–1166 or *mullarkeybp@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection: The form collects information from aliens applying for a waiver of the two-year residency requirement prescribed by INA Section 212(e).

Methodology: Form DS–3035 will be mailed to the Waiver Review Division of the State Department's Visa Office.

Dated: September 27, 2004.

Stephen A. Edson,

Acting Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 04–22855 Filed 10–8–04; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–77]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal

Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 5, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Dispositions of Petitions

Docket No.: FAA–2002–13602.
Petitioner: Eagle Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Eagle Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 08/20/2004, Exemption No. 7919A.*

Docket No.: FAA–2002–13369.
Petitioner: Aero Sports Connection.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Aero Sports Connection to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 8/20/2004, Exemption No. 7390B.*

Docket No.: FAA–2004–18899.
Petitioner: WorldWind Helicopters, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit WorldWind Helicopters, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 8/23/2004, Exemption No. 8387.*

Docket No.: FAA–2002–13288.
Petitioner: Ozark Air Charter Company, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Ozark Air Charter Company, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 8/23/2004, Exemption No. 7906A.*

Docket No.: FAA–2004–18666.
Petitioner: Rotor Wing Aviation, LLC.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Rotor Wing Aviation, LLC to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 8/20/2004, Exemption No. 8382.*

Docket No.: FAA–2004–18735.
Petitioner: Morcom Aviation Services, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Morcom Aviation Services, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 8/20/2004, Exemption No. 8383.*

Docket No.: FAA–2004–18696.
Petitioner: Aviation Expeditions.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Aviation Expeditions to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 8/20/2004, Exemption No. 8386.*

Docket No.: FAA–2004–18866.
Petitioner: California Shock Trauma Air Rescue.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit California Shock Trauma Air Rescue to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 8/20/2004, Exemption No. 8384.*

Docket No.: FAA–2004–18871.
Petitioner: Valley Air Express.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Valley Air Express to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 8/20/2004, Exemption No. 8385.*

Docket No.: FAA–2004–18950.
Petitioner: Dixie Air Charter, LLC.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Dixie Air Charter, LLC to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 9/3/2004, Exemption No. 8395.*

Docket No.: FAA–2000–8474.
Petitioner: Howell Enterprises, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Howell Enterprises, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 9/3/2004, Exemption No. 7427B.*

Docket No.: FAA–2000–8434.
Petitioner: Air Transport Association of America, Inc.
Section of 14 CFR Affected: 14 CFR 121.652(a) and (c).
Description of Relief Sought/Disposition: To permit Air Transport Association of America, Inc., member airlines and any similarly situated part 121 operator, to permit a pilot in command (PIC) conducting operations under part 121 to perform an instrument approach procedure to the weather minima prescribed by this exemption during the first 100 hours of service as PIC, in the type of airplane he/she is operating, using an alternative means approved by the Administrator to satisfy the requirements of § 121.652(a) and (c). *Grant, 8/28/2004, Exemption No. 5549G.*

Docket No.: FAA–2001–10191.
Petitioner: Department of the Air Force.
Section of 14 CFR Affected: 14 CFR 91.209(a)(1) and (b).
Description of Relief Sought/Disposition: To permit the Department of the Air Force an amendment to Exemption No. 7960 that will allow the participation of other military services while conducting joint operations. *Grant, 8/28/2004, Exemption No. 7960A.*

Docket No.: FAA–2004–17905.
Petitioner: Cherry-Air, Inc.
Section of 14 CFR Affected: 14 CFR appendix G to part 91.
Description of Relief Sought/Disposition: To permit Cherry-Air, Inc., to operate its aircraft in reduced vertical separation minimum airspace without Cherry-Air or its aircraft complying with appendix G to part 91. *Denial, 8/25/2004, Exemption No. 8393.*

Docket No.: FAA–2001–9501.
Petitioner: United States Air Force.
Section of 14 CFR Affected: 14 CFR 91.209(a)(1) and (b).
Description of Relief Sought/Disposition: To permit the United States Air Force an amendment to Exemption No. 7687A that will extend the expiration date for 5 years and remove the requirement to issue a NOTAM. *Grant, 8/26/2004, Exemption No. 7687B.*

Docket No.: FAA–2002–13377.
Petitioner: Continental Micronesia, Inc.
Section of 14 CFR Affected: 14 CFR 121.440(a).
Description of Relief Sought/Disposition: To permit Continental Micronesia, Inc., to meet line check requirements using an alternative line check program. *Grant, 8/28/2004, Exemption No. 7902A.*

Docket No.: FAA–2000–8153.
Petitioner: American Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.317(a).

Description of Relief Sought/ Disposition: To permit American Airlines, Inc., to operate its Boeing 737 and 777 aircraft with ''No Smoking'' signs that are always illuminated. *Grant, 8/28/2004, Exemption No. 6853C.*

Docket No.: FAA–2000–8000.

Petitioner: Delta Air Lines, Inc.

Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/ Disposition: To permit Delta Air Lines, Inc., to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and a landing when completing initial or upgrade training as specified in § 121.424. *Grant, 8/28/2004, Exemption No. 7376D.*

Docket No.: FAA–2000–8454.

Petitioner: United Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/ Disposition: To permit United Airlines, Inc., to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and a landing when completing initial or upgrade training as specified in § 121.424 *Grant, 9/8/2004, Exemption No. 6570F.*

Docket No.: FAA–2004–18971.

Petitioner: Spirit Airlines.

Section of 14 CFR Affected: 14 CFR 121.623(a) and (d), 121.643, and 121.645(e).

Description of Relief Sought/ Disposition: To permit Spirit Airlines to conduct its supplemental operations within the 48 contiguous United States and the District of Columbia using the flight regulations for alternate airports as required by § 121.619 and fuel reserve requirements as required by § 121.639 that are applicable to domestic operations. *Grant, 9/9/2004, Exemption No. 8398.*

Docket No.: FAA–2004–17232.

Petitioner: Raytheon Aircraft Charter & Management.

Section of 14 CFR Affected: 14 CFR 91.501.

Description of Relief Sought/ Disposition: To permit Raytheon Aircraft Charter & Management to transport customers and aircraft parts for owners of Raytheon Aircraft Company-manufactured aircraft for a nominal fee. Denial, 9/9/2004, Exemption No. 8397.

Docket No.: FAA–2002–12010.

Petitioner: Taunton Airport Association, Inc.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.

Description of Relief Sought/ Disposition: To permit Taunton Airport Association, Inc., to conduct local sightseeing flights at the Taunton Municipal Airport, Taunton, Massachusetts, on or about October 23, 2004, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135, subject to certain conditions and limitations. *Grant, 9/13/2004, Exemption No. 8401.*

Docket No.: FAA–2003–15373.

Petitioner: Ameriflight, Inc.

Section of 14 CFR Affected: 14 CFR 135.85.

Description of Relief Sought/ Disposition: To permit Ameriflight, Inc., and each Ameriflight pilot to transport FAA-certificated airmen who are employed as flight crewmembers by another part 121 or part 135 certificate holder, and who are fully current and qualified with that other part 121 or part 135 certificate holder subject to certain conditions and limitations. *Grant, 9/8/2004, Exemption No. 8396.*

Docket No.: FAA–2002–12249.

Petitioner: Aviation Systems Standards.

Section of 14 CFR Affected: 14 CFR 61.3(a) and (c).

Description of Relief Sought/ Disposition: To permit Aviation Systems Standards to issue facsimile pilot certificates and medical certificates to crewmembers whose certificates have been lost, destroyed, or misplaced. *Grant, 9/10/2004, Exemption No. 7363B.*

Docket No.: FAA–2002–14166.

Petitioner: Mr. Kent Ewing.

Section of 14 CFR Affected: 14 CFR 91.109(a).

Description of Relief Sought/ Disposition: To permit Mr. Kent Ewing to conduct certain flight instruction and simulated instrument flights to meet the recent experience requirements in Beechcraft Bonanza, Baron, and Travel Air airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *Grant, 9/10/2004, Exemption No. 7961A.*

Docket No.: FAA–2000–8527.

Petitioner: SIMCOM Training Center.

Section of 14 CFR Affected: 14 CFR 91.9(a) and 91.531(a)(1) and (2).

Description of Relief Sought/ Disposition: To permit SIMCOM Training Center and operators of Cessna Citation model 500, S550, 552, and 560 airplanes an amendment to Exemption No. 7487D that will specifically name the Cessna Citation models as the Bravo, Encore, and Ultra. *Denial, 9/10/2004, Exemption No. 7487E.*

Docket No.: FAA–2001–10269.

Petitioner: Executive Jet Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 135.152(h)(1) through (h)(57), (i), and (j).

Description of Relief Sought/ Disposition: To permit Executive Jet Aviation, Inc., to operate its Falcon 2000 aircraft without recording the parameters listed in § 135.152(h)(1) through (h)(57) within the ranges, accuracies, resolutions, and recording intervals specified in appendix F to part 135. *Denial, 9/10/2004, Exemption No. 8400.*

Docket No.: FAA–2004–19087.

Petitioner: Mesaba Aviation, Inc., d.b.a. Mesaba Airlines.

Section of 14 CFR Affected: 14 CFR 121.574(a)(1)(i) and (iii) and (3)(i).

Description of Relief Sought/ Disposition: To permit Mesaba Aviation, Inc., d.b.a. Mesaba Airlines to allow its passengers to use oxygen storage and dispensing equipment for medical purposes while aboard Mesaba aircraft when the equipment is furnished and maintained by another part 121 certificate holder. *Denial, 9/10/2004, Exemption No. 8399.*

Docket No.: FAA–2002–13012.

Petitioner: Frontier Flying Service, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Frontier Flying Service, Inc., to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed on those aircraft. *Grant, 9/14/2004, Exemption No. 8402.*

Docket No.: FAA–2004–19099.

Petitioner: Cottonwood Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Cottonwood Aviation, Inc., to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed on those aircraft. *Grant, 9/14/2004, Exemption No. 8403.*

Docket No.: FAA–2004–18995.

Petitioner: Crystal Shamrock.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Crystal Shamrock to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed on those aircraft. *Grant, 9/17/2004, Exemption No. 8406.*

Docket No.: FAA–2003–14204.
Petitioner: Abilene Aero, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Abilene Aero, Inc., to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed on those aircraft. *Grant, 9/17/2004, Exemption No. 7948B.*

Docket No.: FAA–2000–8338.
Petitioner: Tatonduk Outfitters Limited d.b.a. Everts Air Alaska.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Tatonduk Outfitters Limited d.b.a. Everts Air Alaska to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed on those aircraft. *Grant, 9/16/2004, Exemption No. 7403C.*

Docket No.: FAA–2003–14279.
Petitioner: South Aero, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit South Aero, Inc., to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed on those aircraft. *Grant, 09/16/2004, Exemption No. 7985A.*

Docket No.: FAA–2002–12484.
Petitioner: Dynamic Aviation.
Section of 14 CFR Affected: 14 CFR 137.53(c)(2).
Description of Relief Sought/Disposition: To permit Dynamic Aviation an amendment to Exemption No. 7827C that will allow Dynamic Aviation pilots to operate additional aircraft. *Grant, 9/15/2004, Exemption No. 7827D.*

Docket No.: FAA–2001–11090.
Petitioner: Army Aviation Heritage Foundation.
Section of 14 CFR Affected: 14 CFR 91.319, 119.5(g), and 119.25.
Description of Relief Sought/Disposition: To permit an extension of Exemption No. 7736 to the Army Aviation Heritage Foundation (AAHF), which will allow them to operate its former military UH–1H helicopter for the purpose of carrying passengers on local educational flights, subject to revised conditions and limitations. *Grant, 9/16/2004, Exemption No. 7736C.*

Docket No.: FAA–2004–19071.
Petitioner: Mr. Daryl Baker.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.
Description of Relief Sought/Disposition: To permit Mr. Daryl Baker to conduct local sightseeing flights at the Windham Airport, Willimantic, Connecticut, between September 25, and October 10, 2004, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135, subject to certain conditions and limitations. *Grant, 9/20/2004, Exemption No. 8407.*

Docket No.: FAA–2004–19006.

Petitioner: Traffic Management Corporation.

Section of 14 CFR Affected: 14 CFR 125.224.

Description of Relief Sought/Disposition: To permit Traffic Management Corporation to operate two leased L–188 Electra aircraft without a Traffic Alert and Collision Avoidance System II and the appropriate Mode S transponder for a period of 1-year, because of economic hardship endured since the terrorist attack of September 11, 2001. *Denial, 9/16/2004, Exemption No. 8408.*

Docket No.: FAA–2004–19004.

Petitioner: Zantop International Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.356.

Description of Relief Sought/Disposition: To permit Zantop International Airlines, Inc., to operate certain aircraft without a Traffic Alert and Collision Avoidance System II and the appropriate Mode S transponder for a period of 1-year, because of economic hardship endured since the terrorist attack of September 11, 2001. *Denial, 9/16/2004, Exemption No. 8409.*

Docket No.: FAA–2000–8100.

Petitioner: Northwest Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.440(a) and SFAR 68, section 6(b)(3)(ii)(A).

Description of Relief Sought/Disposition: To permit Northwest Airlines, Inc., an amendment to Exemption No. 5815, that will enable them to meet line check requirements using an alternative line check program, subject to revised conditions and limitations. *Grant, 9/16/2004, Exemption No. 5815F.*

[FR Doc. 04–22853 Filed 10–8–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 18, Notice No. 2]

Burlington Northern Santa Fe Railway Company; Notice Rescinding FRA Emergency Order 18, Requiring the Capability To Initiate Emergency Application of Air Brakes From the Head End and Rear of Trains, After a 60-day Interim Transition Period

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that, absent further notice, FRA will consider the emergency situation requiring the issuance of Emergency Order 18 to have abated at the conclusion of a 60-day interim transition period during which the Burlington Northern Santa Fe Railway Company (BNSF) will comply with a series of modified operational requirements before beginning full operation under the existing Federal regulations related to end-of-train (EOT) devices. Emergency Order 18 requires that all westward trains operated by the BNSF on the Cajon Subdivision, between Barstow milepost 745.9 and Baseline milepost 79.9, have the capability to initiate an emergency application of the air brakes from both the head and rear of the train and imposes certain inspection, testing, and operational requirements on the railroad.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws. 49 U.S.C. 20101, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice ''causes an emergency situation involving a hazard of death or personal injury.'' 49 U.S.C. 20104. These orders may immediately impose such ''restrictions and prohibitions * * * that may be necessary to abate the situation.'' (*Ibid.*)

Background

BNSF's line of railroad between Barstow and Los Angeles, California, consists of double main track which passes through the San Bernardino Mountains via ''Cajon Pass.'' The route for westward moving trains involves a steady climb from Barstow to Summit, California, a distance of approximately 55 miles. At Summit, the line begins a

descent westward with a more than 3 percent grade on one track and a more than 2 percent grade on the other track.

Emergency Order 18 was issued on February 1, 1996, following two significant incidents in 1994 and 1996 on Cajon Pass resulting from an inability to control train speed following incomplete braking in the train. *See* 61 FR 5058 (February 9, 1996). Emergency Order 18 requires that all westward trains operated by the BNSF on the Cajon Subdivision, between Barstow milepost 745.9 and Baseline milepost 79.9, have the capability to initiate an emergency application of the air brakes from both the head and rear of the train. The Emergency Order set out a variety of ways in which the railroad could accomplish this task and imposes certain inspection and testing requirements for trains utilizing two-way EOT devices. *See* 61 FR 5059–60. BNSF has operated under the provisions of Emergency Order 18 for over eight years without any significant non-compliance.

Subsequent to the issuance of Emergency Order 18, FRA issued regulations that directly addressed the inspection, testing, design, and operation of two-way EOT devices. *See* 62 FR 294 (January 2, 1997). These regulations are now found in subpart E of the Brake System Safety Standards for Freight and other Non-Passenger Trans and Equipment contained at 49 CFR part 232. Other than the area covered by Emergency Order 18, the rest of the United States has effectively and safely operated under the requirements contained in these Federal regulations. In June of 2003, after seven years of compliant operation under Emergency Order 18, BNSF requested relief from the requirements of the Emergency Order. The railroad conducted a meeting involving representatives of railroad employees and FRA in Redlands, California on January 15, 2004, to discuss rescission of the Order and to gather suggestions for potential post-relief operating procedures. (The California Public Utilities Commission was also invited to the meeting.)

On July 30, 2004, FRA's Acting Associate Administrator for Safety provided some temporary relief from the provisions of Emergency Order 18 to allow the required inspections and tests to be conducted at locations other than at Barstow, California, while FRA continued to assess the continued necessity of the Emergency Order.

On September 23, 2004, BNSF filed a supplemental petition with FRA again seeking rescission of Emergency Order 18. BNSF asserts that an ''emergency situation'' within the meaning of 49 U.S.C. 20104 no longer exists at Cajon Pass. BNSF also identifies three primary reasons for FRA to rescind the Emergency Order 18. First, BNSF contends that it has met the requisite grounds for relief by continuously operating in compliance with the Order for a period of 180 consecutive days. Second, BNSF states that the issuance of the Federal regulations regarding two-way EOT devices ensures the safety of train operations over the Cajon Pass because BNSF operations on every other mountain grade territory over which it operates have safely and effectively utilized those regulations. Finally, BNSF asserts that the measures it voluntarily employs for operating trains through Cajon Pass further enhance the safety of such train movements.

Finding and Order

Based on the years that BNSF has operated pursuant to the requirements of Emergency Order 18 without any significant non-compliance, the occurrence of no significant train accident or injury related to the operation of trains over Cajon Pass during that time, and the existence of Federal regulations directly addressing the inspection, testing, and maintenance of two-way EOT devices that are effectively utilized throughout the rest of the country, FRA concludes that BNSF has made a *prima facie* case for rescission of Emergency Order 18. However, due to the length of time BNSF has operated under Emergency Order 18, FRA believes it is prudent to have a short interim transition period of 60 days before complete rescission of the Order occurs and operation solely under the existing Federal regulation begins. During this interim 60-day period the original requirements of Emergency Order 18 will be rescinded and be replaced by interim requirements in order to allow the railroad to transition its operations through Cajon Pass to be consistent with existing Federal regulations. FRA considered the information and views provided by BNSF when developing the interim requirements. This short interim transition period will allow both FRA and the railroad to monitor the operations through Cajon pass during that period to ensure that any personnel and operating issues that may arise in the transition are adequately and safely addressed. Accordingly, pursuant to the authority of 49 U.S.C. 20104, delegated to me by the Secretary of Transportation (49 CFR 1.49), it is hereby ordered that:

(1) As of October 9, 2004, the inspection, testing, and operating requirements mandated in Emergency Order 18, Notice 1, issued on February 1, 1996, are rescinded. Instead, starting on that same date, BNSF must ensure that all westward operating trains between Barstow milepost 745.9 and Baseline milepost 79.9 have the capability to effectuate an emergency brake application of the air brakes from both the head and rear of the train in accordance with 49 CFR part 232, subpart E—End-of-Train Devices, and abide by the additional requirements stated in paragraph (2), below.

(2) Beginning on October 9, 2004, and continuing for a period of 60 days, BNSF shall comply with the following inspection, testing, and operational requirements, except when the train is operated in accordance with paragraphs 1(B), 1(C), or 1(D) of the Order in effect prior to the issuance of this notice:

(A) All westward train movements over the Needles Subdivision that are intended to continue between Summit milepost 55 and Baseline milepost 79.9 shall include an emergency brake test at some location between Needles and Summit, California. For purposes of this notice, an emergency brake test means a test to determine that an emergency brake application can be initiated from the rear of the train and that it propagates throughout the entire train. The test may be activated by using the head-end device and determining that the brake pipe pressure drops to zero, and it is not necessary to place an employee at the rear of the train to conduct this test.

(B) All westward train movements over the Mojave Subdivision that are intended to continue between Summit milepost 55 and Baseline milepost 79.9 shall include an emergency brake test at some location between Hinkley and Summit, California.

(C) BNSF shall maintain a written record in the cab of the lead-locomotive for each emergency brake test performed under paragraphs (2)(A) and (B) of this Order if the emergency brake test was performed by a crew other than the crew responsible for the train during its descent over the Cajon Pass.

(D) Any westward train operating with a non-turbine EOT device between Summit milepost 55 and Baseline milepost 79.9 shall be equipped with batteries that are sufficiently charged at the time of installation to ensure that the EOT device remains operative until the train reaches destination as required in 49 CFR 232.407(f)(2). In addition, the following requirements shall also apply:

(i) BNSF shall comply with all applicable provisions of its Air Brake and Train Handling Rules that require EOT Device batteries to be tested every 60 days to ensure that they can be adequately charged;

(ii) If a ''low battery'' indication is displayed during any westward train movement from Barstow through Summit, California, BNSF shall bring the train to a stop prior to departing Summit, California and change the battery.

(iii) If a ''low battery'' indication is displayed during any westward train movement at or from Summit through Baseline, California, BNSF shall immediately bring the train safely to a stop in accordance with the railroad's operating rules and change the battery.

(iv) BNSF shall maintain a written or electronic record of each battery change made pursuant to paragraph (2)(D)(ii) of this Order.

(3) The inspection, testing, and operational requirements contained in paragraph (2) of this Order will terminate, and this Order will no longer be in effect, on December 8, 2004 unless FRA finds a pattern of non-compliance by BNSF with either the provisions of this Order or of 49 CFR part 232, subpart E and issues a subsequent notice containing a finding that the emergency situation still exists and imposing any necessary requirements. Any such finding will be provided to the railroad in writing from FRA's Associate Administrator for Safety before any extension in the above-noted date is effectuated. After December 8, 2004, BNSF operations subject to this Order shall comply with all applicable portions of 49 CFR part 232, subpart E. If during the period covered by this notice, FRA determines that an emergency situation exists, as the term is used in 49 U.S.C. 20104, FRA reserves the right to issue an emergency order to address the situation if necessary.

Relief

Emergency Order 18 will be rescinded in accordance with the dates and procedures identified in paragraphs (1) and (3) of the Finding and Order section of this notice. FRA will, at any time, consider requests by BNSF to exclude certain train operations from the scope of this order based on satisfactory demonstration that those operations can be safely performed using other procedures. However, all aspects of this order apply to all westward trains departing Barstow unless and until written special approval is granted permitting other procedures for specific train operations. The Associate Administrator for Safety is authorized to issue such special approvals without amending this order.

Penalties

Any violation of this order shall subject the person committing the violation to a civil penalty of up to $20,000. 49 U.S.C. 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112.

Effective Date and Notice to Affected Persons

This order shall take effect at 12:01 a.m (P.s.t.) on October 8, 2004, and apply to all westward trains operating between Barstow milepost 745.9 and Baseline milepost 79.9. Notice of this Order will be provided by publishing it in the **Federal Register**. Copies of this Emergency Order will be sent by mail or facsimile prior to publication to the Vice President-Operations of BNSF, counsel for BNSF, officials of interested labor organizations, the California PUC, and the Association of American Railroads.

Review

Opportunity for formal review of this Emergency Order notice and the new requirements imposed herein will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211. *See* 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, DC on October 6, 2004.

Betty Monro,

Acting Administrator.

[FR Doc. 04–22941 Filed 10–8–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–18745]

Grant of Applications of Three Motorcycle Manufacturers for Temporary Exemptions and Renewal of Temporary Exemptions From Federal Motor Vehicle Safety Standard No. 123

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of applications for temporary exemptions and renewals of temporary exemptions from a Federal motor vehicle safety standard.

SUMMARY: This notice grants the applications by three motorcycle manufacturers (Honda, Piaggio, and Yamaha) for temporary exemptions, and renewal of temporary exemptions, from a provision in the Federal motor vehicle safety standard on motorcycle controls and displays specifying that a motorcycle rear brake, if provided, must be controlled by a right foot control. We are permitting each manufacturer to use the left handlebar as an alternative location for the rear brake control. Each applicant has asserted that ''compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles.''

DATES: The grant of each application for temporary exemption expires September 1, 2007.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Mr. Michael Pyne, Office of Crash Avoidance Standards at (202) 366–4171. His FAX number is: (202) 493–2739.

For legal issues, you may contact Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her FAX number is: (202) 366–3820.

You may send mail to these officials at: National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

49 U.S.C. 30113(b) provides the Secretary of Transportation the authority to exempt, on a temporary basis, motor vehicles from a motor vehicle safety standard under certain circumstances. The exemption may be renewed, if the vehicle manufacturer reapplies. The Secretary has delegated the authority for section 30113(b) to NHTSA.

NHTSA has established regulations at 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards.* Part 555 provides a means by which motor vehicle manufacturers may apply for temporary exemptions from the Federal motor vehicle safety standards on the basis of substantial economic hardship, facilitation of the development of new motor vehicle safety or low-emission engine features, or existence of an equivalent overall level of motor vehicle safety.

Federal Motor Vehicle Safety Standard (FMVSS) No. 123, *Motorcycle controls and displays* (49 CFR 571.123) specifies requirements for the location, operation, identification, and illumination of motorcycle controls and displays, and requirements for motorcycle stands and footrests. Among other requirements, FMVSS No. 123 specifies that for motorcycles with rear wheel brakes, the rear wheel brakes must be operable through the right foot control, although the left handlebar is permissible for motor-driven cycles (*See* S5.2.1, and Table 1, Item 11). Motor-

driven cycles are motorcycles with motors that produce 5 brake horsepower or less (*See* 49 CFR 571.3, Definitions).

On November 21, 2003, NHTSA published in the **Federal Register** (68 FR 65667) a notice proposing two regulatory alternatives to amend FMVSS No. 123. Each alternative would require that for certain motorcycles without a clutch control lever, the rear brakes must be controlled by a lever located on the left handlebar. We also requested comment on industry practices and plans regarding controls for motorcycles with integrated brakes. If this proposed rule is made final, the left handlebar would be permitted as an alternative location for the rear brake control.

II. Applications for Temporary Exemption From FMVSS No. 123

NHTSA has received applications for temporary exemption from S5.2.1 and Table 1, Item 11 from three motorcycle manufacturers: Honda Motor Company, Ltd. (Honda); Piaggio & C. S.p.A. and Piaggio USA, Inc (Piaggio); and Yamaha Motor Corporation USA (Yamaha). Honda asks for a new temporary exemption for the PS250 (for Model Years (MYs) 2005 and 2006), and an extension of an existing temporary exemption for the NSS250 (for MYs 2005–2006). Piaggio asks for new temporary exemptions for the Vespa GT200 (for MYs 2005–2006), the Piaggio BV200 (for MYs 2005–2006) and the Piaggio X9–500 (for MYs 2005–2006). Piaggio asks for an extension of an existing temporary exemption for the Vespa ET4 (for MYs 2004–2006). Yamaha asks for a new temporary exemption for the YP–400 (for MYs 2005–2006), which Yamaha asserts is ''equivalent'' to the Yamaha Vino 125. The Vino 125 is the subject of a grant of a temporary exemption from Standard No. 123 until March 1, 2005 (*See* 68 FR 15552; March 31, 2003). All of these motorcycles are considered ''motor scooters.''

The safety issues are identical in the case of all of these motorcycles. Honda, Piaggio, and Yamaha have applied to use the left handlebar as the location for the rear brake control on their motorcycles whose engines produce more than 5 brake horsepower (all of the motorcycles specified in the previous paragraph). The frames of each of the motorcycles that are the subject of these applications for temporary exemptions have not been designed to mount a right foot operated brake pedal (*i.e.,* these motor scooters have a platform for the feet and operate only through hand controls). Applying considerable stress to this sensitive pressure point of the motor scooter frame by putting on a foot operated brake control could cause failure due to fatigue, unless proper design and testing procedures are performed.

III. Why the Petitioners Claim the Overall Level of Safety of the Motorcycles Equals or Exceeds That of Non-exempted Motorcycles

The applicants have argued that the overall level of safety of the motorcycles covered by their petitions equals or exceeds that of a non-exempted motorcycle for the following reasons. Each manufacturer stated that motorcycles for which application have been submitted are equipped with an automatic transmission. As there is no foot-operated gear change, the operation and use of a motorcycle with an automatic transmission is similar to the operation and use of a bicycle, and the vehicles can be operated without requiring special training or practice. Each manufacturer provided the following additional arguments:

Honda—Honda provided separate applications for the new exemption for the PS250 and the renewal of the exemption for the NSS250. In both cases, Honda provided test data showing how each motorcycle met the FMVSS No. 122 *Motorcycle brake systems* test specified at S5.3, service brake system—second effectiveness test. Honda provided separate sets of data showing the results of a second effectiveness comparison test data for the NSS250 and the PS250 equipped with the combined brake system. The test results for the NSS250 and the PS250 were compared to results for similarly sized models without the combined brake systems. In all cases, the NSS250 and the PS250 had shorter braking stopping distances than did the models without the combined brake systems.

Honda also provided results of ECE 78 test data for the NSS250 and PS250, equipped with the combined brake system, and provided test data comparing stopping distances on various surfaces using the rear brake control only between an NSS250 and a PS250 equipped with a combined brake system and a similar model without a combined brake system.

Piaggio—Piaggio stated that brake tests in accordance with FMVSS No. 122 *Motorcycle brake systems,* were conducted on all Vespa and Piaggio models and stated that all models ''easily exceed'' the performance requirements of FMVSS No. 122. Piaggio also stated that Vespa and Piaggio vehicles fully meet the 93/14 EEC brake testing requirements, and enclosed a copy of the brake testing report of the ''Ministero dei Trasporti e della Navigazione'' Italy or TUV/VCA.

Piaggio cited several reasons why it believes the left handlebar rear brake actuation force provides an overall level of safety that equals or exceeds a motorcycle with a right-foot rear brake control. Among these reasons, Piaggio cited the ''state of the art'' hydraulically activated front disc brakes used on Vespa and Piaggio vehicles, as providing more than enough brake actuation force available to the ''hand of even the smallest rider.'' Piaggio explained that because of the greater physical size of a foot-powered brake pedal, mechanical efficiency is lower and inertia about the pivot is higher. This results in less effective feedback, or what Piaggio describes as ''feeling'' of the actuation system. Piaggio asserted that because there is more sensitivity to brake feedback from the hand lever, use of a hand lever reduces the probability of inadvertent wheel locking in an emergency braking situation. Piaggio stated that inexperienced riders may lose control of their motorcycle because of rear wheel locking, and that use of the hand lever reduces the possibility of rear wheel locking.

Yamaha—Yamaha cited an August 1999 study, ''Motorcycle Braking Control Response Study'' by T.J. Carter, as showing that handlebar-mounted rear brakes have an equivalent level of safety to that of right-foot control rear brakes, because handlebar-mounted rear brakes have equivalent reaction times to the foot control. Yamaha analogized motorcycle operators changing from the dual hand control wheel brakes to the hand/foot arrangement, to that of an automobile driver going from an automatic transmission to a stick shift. Yamaha asserted: ''[t]here have been no required warnings of 'change' or 'difference in operating character' to the automobile operator, nor has there been shown to be a lessened or lowered level of equivalent safety for the two different systems on the same platform (automobiles).''

IV. Why Petitioners Claim an Exemption Would Be in the Public Interest and Would Be Consistent With the Objectives of Motor Vehicle Safety

Each manufacturer offered the following reasons why temporary exemptions for their motorcycles would be in the public interest and would be consistent with the objectives of motor vehicle safety:

Honda—For both the NSS250 and the PS250, Honda asserted that it is ''certain'' that the level of safety of the two motorcycles ''is equal to similar vehicles certified under FMVSS No.

123; therefore, we seek renewal of the [or a new] temporary exemption from this standard.'' Honda noted that both the NSS250 and the PS250 are equipped with a combined brake system. The combined brake system uses both front and rear disc brakes and employs a unique three-piston front caliper. Applying the right handlebar brake lever activates the front brake caliper. Applying the left handlebar brake lever activates one piston in the front brake caliper and the rear brake caliper.

Honda asserted that with the combined brake system, the rider is able to precisely control brake force distribution, depending on which control is used. Applying the right handlebar lever activates the outer two pistons in the front caliper. In this case, the front wheel receives a larger portion of the braking force. Applying the left handlebar lever activates the center piston in the front caliper and the single piston in the rear caliper. A valve has been installed in this system to slightly delay the brake force at the front wheel. This delay improves braking by allowing the rear of the scooter to settle, which helps to minimize front nose dive and weight shift. Honda further noted that using both controls at once activates all pistons in both calipers for maximum braking force.

For the NSS250, Honda plans to offer some models with an optional antilock-brake system.

Piaggio—Piaggio stated that with the introduction of automatic transmission engines on motorcycles, ''the Code of Federal Regulations is completely out of harmonization with the majority of countries in the world as far as the FMVSS 123—S5.2.1 is concerned.'' Piaggio asserted all European Community countries permit motorcycle manufacturers to make their own decision whether to use a left handlebar control or a right foot control for rear wheel brakes.

Yamaha—Since there have been many previous exemptions to Standard No. 123, S5.2.1, and Table 1, Item 11 granted, Yamaha asserts that ''the grounds and precedent are clear and a redundant reiteration of same is not in order to preserve precious Agency time.'' Yamaha concluded that its ''request is consistent with the intent of the National Traffic and Motor Vehicle Safety Act and offers an equivalent level of safety for consumers and other motorists/highway users.''

V. Notification of Receipt of Applications and Public Comments

On August 2, 2004 (60 FR 46205) (Docket No. NHTSA–2004–18745), we published a **Federal Register** notice announcing the receipt of applications for temporary exemptions and of renewals of exemptions from Honda, Piaggio, and Yamaha. We published each applicant's reasons why the overall safety of the motorcycles equals or exceed that of non-exempted motorcycles, and why each applicant claimed an exemption would be in the public interest and would be consistent with the objectives of motor vehicle safety. We asked for public comment on each application.

In response to the August 2, 2004, document, we received eight comments. All commenters except for one, favored granting the applications for temporary exemption from the requirements of item 11, column 2, table 1 of FMVSS No. 123. The commenter who did not favor granting the applications wrote that placing the rear brake control on the left handle bar would be ''confusing to the rider'' because historically the clutch release has been in that location. The commenter did not state if the confusion has been his personal experience, and did not cite specific instances where such confusion may have led to a rider losing control of the motorcycle or led to a crash. Five of the commenters wrote in favor of a specific manufacturer's product.

VI. NHTSA's Decisions on the Applications

It is evident that, unless Standard No. 123 is amended to permit or require the left handlebar brake control on motor scooters with more than 5 hp, the petitioners will be unable to sell their motorcycles if they do not receive a temporary exemption from the requirement that the right foot pedal operate the brake control. It is also evident from the previous grants of similar petitions that we have repeatedly found that the motorcycles exempted from the brake control location requirement of Standard No. 123 have an overall level of safety at least equal to that of nonexempted motorcycles.

In consideration of the foregoing, we hereby find that the petitioners have met their burden of persuasion that to require compliance with Standard No. 123 would prevent these manufacturers from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles. We further find that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Therefore:

1. NHTSA Temporary Exemption No. EX–2002–2, exempting Honda Motor Company, Ltd. from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays,* that the rear wheel brakes be operable through the right foot control, is hereby extended to expire on September 1, 2007. This exemption applies only to the Honda NSS250.

2. Honda Motor Company, Ltd. is hereby granted NHTSA Temporary Exemption No. EX–04–2 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays,* that the rear wheel brakes be operable through the right foot control. This exemption applies only to the Honda PS250. This exemption will expire on September 1, 2007.

3. NHTSA Temporary Exemption No. EX–2002–3 exempting Piaggio & C. S.p.A. and Piaggio USA, Inc. from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays,* that the rear wheel brakes be operable through the right foot control, is hereby extended to expire on September 1, 2007. This exemption applies only to the Vespa ET4.

4. Piaggio & C. S.p.A. and Piaggio USA, Inc. are hereby granted NHTSA Temporary Exemption No. EX–04–3 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays,* that the rear wheel brakes be operable through the right foot control. This exemption applies only to the following Piaggio models: Vespa GT200, Piaggio BV200, and the Piaggio X9–500. This exemption will expire on September 1, 2007.

5. Yamaha Motor Corporation USA is heregy granted NHTSA Temporary Exemption No. EX–04–4 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays,* that the rear brakes be operable through the right foot control. This exemption applies only to the Yamaha YP–400 model. The exemption will expire on September 1, 2007.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: October 5, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–22852 Filed 10–8–04; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–251520–96]

Proposed Collection; Comment Request for Regulation Project; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice and request for comments.

SUMMARY: This document contains a correction to a notice and request for comments, which was published in the **Federal Register** on Tuesday, September 14, 2004 (69 FR 55492). This notice relates to a comment request on proposed collection for regulation project.

FOR FURTHER INFORMATION CONTACT: Allan Hopkins, (202) 622–6665 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice and request for comments that is the subject of this correction is required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Need for Correction

As published, the comment request for regulation project contains errors which may prove to be misleading and are need of clarification.

Correction of Publication

Accordingly, the publication of the comment request for regulation project, which were the subject of FR Doc. 04–20618, are corrected as follows:

1. On page 55492, column 3, under the caption ''SUMMARY:'', lines 13 and 14, the language, ''existing notice of proposed rulemaking and temporary regulation, REG–251520–'' is corrected to read ''existing final regulation, REG–251520–''.

2. On page 55492, column 3, under the caption ''SUMMARY:'', lines 17 thru 18, the language, ''Programs Redeterminations (Sections 1.861–18 and 1.861–18(k)).'' is corrected to read ''Programs and Redeterminations (Section 1.861–18).''

3. On page 55493, column 1, under the caption **'SUPPLEMENTARY INFORMATION:'**, the language,

''Estimated Number of Respondents: 1.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1.''

is corrected to read ''The burden for the collection of information in this regulation is reflected in the burden of Form 3115.''

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 04–22859 Filed 10–8–04; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Postponement of Open Public Hearing—Seattle, WA

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of postponement of open public hearing.

SUMMARY: Notice is hereby given of the following postponement of hearing of the U.S.-China Economic and Security Review Commission scheduled for Seattle, Washington.

Name: C. Richard D'Amato, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission's October 14th hearing scheduled in Seattle, Washington to examine ''The Impact of U.S-China Trade and Investment on Pacific Northwest Industries'' will not take place. It will be rescheduled for another date and time in early 2005. The Commission will announce the new date and venue when confirmed on its Web site at *http://www.uscc.gov.*

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this notice of postponement should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; phone 202–624–1409, or via e-mail at *kmichels@uscc.gov.*

Authority: The Commission was established in October 2000 pursuant to the Floyd D. Spence National Defense Authorization Act section 1238, Pub. L. 106–398, 114 Stat. 1654A–334 (2000) (codified at 22 U.S.C. section 7002 (2001), as amended, and the ''Consolidated Appropriations Resolution of 2003,'' Pub. L. 108–7 dated February 20, 2003).

Dated: October 7, 2004.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission

[FR Doc. 04–22907 Filed 10–7–04; 10:12 am]

BILLING CODE 1137–00–P

Federal Register

Tuesday,
October 12, 2004

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Southwestern Willow Flycatcher *(Empidonax traillii extimus)*; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI49

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Southwestern Willow Flycatcher (*Empidonax traillii extimus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the federally endangered southwestern willow flycatcher (*Empidonax traillii extimus*) pursuant to the Endangered Species Act of 1973, as amended (Act). In developing this proposal, we evaluated those lands determined to be essential to the conservation of the southwestern willow flycatcher to ascertain if any specific areas are appropriate for exclusion from critical habitat pursuant to section 4(b)(2) of the Act. On the basis of our evaluation, we have determined that the benefits of excluding certain approved and pending Habitat Conservation Plans (HCPs) and lands owned and managed by the Department of Defense from critical habitat for the southwestern willow flycatcher outweighs the benefits of their inclusion, and have subsequently excluded those lands from this proposed designation of critical habitat for this species pursuant to section 4(b)(2) of the Act. As such, we propose to designate 376,095 acres (ac) (152,124 hectares (ha)) [including approximately 1,556 stream miles (2,508 stream kilometers)] of critical habitat which includes various stream segments and their associated riparian areas, not exceeding the 100-year floodplain or flood prone area, on a combination of Federal, State, Tribal, and private lands in southern California (CA), southern Nevada (NV), southwestern Utah (UT), south-central Colorado (CO), Arizona (AZ), and New Mexico (NM).

We hereby solicit data and comments from the public on all aspects of this proposal, including data on economic and other potential impacts of the designation. We are also specifically soliciting public comments on the appropriateness of excluding lands covered by certain approved and pending HCPs and Department of Defense lands pursuant to section 4(b)(2) of the Act from this designation.

In the development of our final designation, we will incorporate or address any new information received during the public comment periods, or from our evaluation of the potential economic impacts of this proposal. As such, we may revise this proposal to address new information and/or to either exclude additional areas that may warrant exclusion pursuant to section 4(b)(2) or to add in those areas determined to be essential to the species but excluded from this proposal.

DATES: We will accept comments until December 13, 2004. Public hearing requests must be received by November 26, 2004.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, AZ Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ, 85021.

2. You may hand-deliver written comments and information to our AZ Ecological Services Office, or fax your comments to 602/242–2513.

3. You may send your comments by electronic mail (e-mail) to *wiflcomments@fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section.

All comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, AZ Ecological Services Office (telephone 602/242–0210; facsimile 602/242–2513).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

Some of the lands we have identified as essential for the conservation of the southwestern willow flycatcher are not being proposed as critical habitat. The following areas essential to the conservation of the southwestern willow flycatcher are not being proposed as critical habitat: ''mission-critical'' training areas on Marine Corps Base, Camp Pendleton (Camp Pendleton), and Seal Beach Naval Weapons Station, Fallbrook Detachment; areas within San Diego Multiple Species Conservation Program (MSCP); areas in the Draft Western Riverside Multiple Species Habitat Conservation Plan (MSHCP); and areas within the Draft City of Carlsbad Habitat Management Plan (MHCP). These areas have been excluded because we believe the benefit of excluding these areas from critical habitat outweighs the benefit of including them. We are also proposing to exclude areas covered under the Roosevelt Lake Habitat Conservation Plan from the final designation of critical habitat. We specifically solicit comment on the inclusion or exclusion of such areas and: (a) Whether these areas are essential; (b) whether these areas warrant exclusion; and (c) the basis for not designating these areas as critical habitat (section 4(b)(2) of the Act);

It is our intent that any final action resulting from this proposal will be as accurate as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Maps of proposed critical habitat are available for viewing by appointment during regular business hours at the AZ Ecological Services Office (see **ADDRESSES** section) or on the Internet at *http://arizonaes.fws.gov.* On the basis of public comment, during the development of the final rule we may find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2), or not appropriate for exclusion, and in all of these cases, this information would be incorporated into the final designation. Final management plans that address the conservation of the southwestern willow flycatcher must be submitted to us during the public comment period so that we can take them into consideration when making our final critical habitat determination. We particularly seek comments concerning:

(1) The reasons why any areas should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh the benefits of excluding areas from the designation;

(2) Specific information on the distribution and abundance of southwestern willow flycatchers and their habitat, and which habitat or habitat components are essential to the conservation of this species and why;

(3) Comments or information as to whether further clarity or specificity of the Primary Constituent Elements is necessary;

(4) Land-use designations and current or planned activities in or adjacent to the areas proposed and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic or other potential impacts resulting from the proposed designation, including, any impacts on small entities;

(6) Some of the lands we have identified as essential for the conservation of the southwestern willow flycatcher are being considered for exclusion from the final designation of critical habitat or are not included in this proposed designation. We specifically solicit comment on the possible inclusion or exclusion of such areas and:

(a) Whether these areas are essential;

(b) whether these, or other areas proposed but not specifically addressed in this proposal, warrant exclusion; and

(c) relevant factors that should be considered by us when evaluating the basis for not designating these areas as critical habitat under section 4(b)(2) of the Act); and

(7) This rule proposes to designate only lands currently occupied by the southwestern willow flycatcher; are there unoccupied lands that should be included and if so, the basis for such an inclusion;

(8) Table 10 of the Southwestern Willow Flycatcher Recovery Plan (Chapter IV, page 86) provides a list of specific river reaches that the Technical Subgroup identified as having substantial recovery value and where recovery efforts should be focused. Are there river reaches identified within this list, not being proposed, but that should be considered for inclusion in the final designation of critical habitat and if so, the basis for such an inclusion;

(9) The focus of our proposal is to protect existing occupied habitat. We seek comment on the essential nature of also designating critical habitat in areas that are in proximity to existing breeding sites and the basis for such inclusion; and

(10) Whether our approach to designate critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods. Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: RIN 1018–AI–49'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our AZ Ecological Services at 602/242–0210. Please note that the e-mail address, *wiflcomments@fws.gov,* will be closed at the termination of the public comment period.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Designation Of Critical Habitat Provides Little Additional Protection To Species

In 30 years of implementing the ESA, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of conservation resources. The Service's present system for designating critical habitat is driven by litigation rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.''

Currently, only 445 species, or 36 percent, of the 1,244 listed species in the (United States) U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent 9th Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United State Fish and Wildlife Service,* has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. We are currently reviewing the decision to determine what effect it may have on the outcome of consultations pursuant to section 7 of the Act.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits regarding critical habitat designation, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits and to comply with the growing number of adverse court orders. As a result, the Service's own proposals to undertake conservation actions based on biological priorities are significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for meaningful additional public participation beyond those minimally required by the Administrative Procedures Act (APA), the Act, and the Service's implementing regulations, or to take additional time for review of comments and information to ensure the rule has addressed all the

pertinent issues before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who will suffer adverse impacts from these decisions challenge them. The cycle of litigation appears endless, is very expensive, and in the final analysis provides little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA); all are part of the cost of critical habitat designation. These costs result in minimal benefits to the species that are not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Status and Distribution

The southwestern willow flycatcher (*Empidonax traillii extimus*) is a small passerine bird, approximately 15 centimeters (5.75 inches) in length. The southwestern willow flycatcher is one of four subspecies of the willow flycatcher currently recognized (Hubbard 1987; Unitt 1987), though Browning (1993) suggests a possible fifth subspecies (*E. t. campestris*) in the central and midwestern U.S. The willow flycatcher subspecies are distinguished primarily by subtle differences in color and morphology, and by habitat use. Phillips (1948) described the southwestern subspecies *E. t. extimus,* and most authors have accepted its taxonomic status (Aldrich 1951; Bailey and Niedrach 1965; Behle and Higgins 1959; Hubbard 1987, Phillips *et al.* 1964; Oberholser 1974; Monson and Phillips 1981; Unitt 1987; Schlorff 1990; Browning 1993; USFWS 1995). Recent research (Paxton 2000) concluded that *E. t. extimus* is genetically distinct from the other willow flycatcher subspecies. The southwestern willow flycatcher is generally paler than other willow flycatcher subspecies, and also differs in morphology (*e.g.*, wing formula, bill length, and wing/tail ratio) (Unitt 1987 and 1997; Browning 1993). The willow flycatcher is an insectivore generalist (USFWS 2002: 26; Drost *et al.* 2003) taking a wide range of invertebrate prey including flying, and ground-, and vegetation-dwelling insect species of terrestrial and aquatic origins (Drost *et al.* 2003).

The historical breeding range of the southwestern willow flycatcher included southern CA, southern NV, southern UT, AZ, NM, western Texas, southwestern CO, and extreme northwestern Mexico (Hubbard 1987; Unitt 1987; Browning 1993). The flycatcher's current range is similar to the historical range, but the quantity of suitable habitat within that range is much reduced from historical levels (USFWS 2002: 7–10). At the end of 2002, 1,153 southwestern willow flycatcher territories were detected throughout southern CA, southern NV, southern UT, southern CO, AZ, and NM (Sogge *et al.* 2003). Rangewide totals do not exist yet for 2003, but the information that does exist from AZ (Smith *et al.* 2004) and NM (S.O. Williams, NMGFD, e-mail 2004) indicates that rangewide numbers have not changed much in distribution or abundance. Since 2002, the southwestern willow flycatcher has not been recently detected breeding in western Texas (USFWS 2002: 9). Recent genetic work by Paxton (2000) verified southwestern willow flycatcher genetic stock in south-central CO (*i.e.*, San Luis Valley) and southwestern UT (*e.g.*, Virgin River). The significance of this is that it confirms the northern extent of the range as *E. t. extimus.* Overall, Paxton (2000) showed that the northern boundary for southwestern willow flycatcher was generally consistent with that proposed by Unitt (1987) and Browning (1993). The current range described in the Recovery Plan (USFWS 2002: 8) adopts a range boundary that reflects these results.

The southwestern willow flycatcher is a neotropical migrant, spending time migrating and breeding in the U.S. from April into September. The flycatcher's wintering range includes southern Mexico, Central America, and probably South America (Stiles and Skutch 1989; Howell and Webb 1995; Ridgely and Gwynne 1989; Unitt 1997; Koronkiewicz *et al.* 1998; Unitt 1999). For an even more thorough discussion of the ecology, life history, and historical records of the southwestern willow flycatcher and most recent rangewide population estimates, see Chapter II of the Recovery Plan USFWS (2002) and Sogge *et al.* (2003).

The southwestern willow flycatcher currently breeds in relatively dense riparian habitats in all or parts of six southwestern states, from near sea level to over 2000 meters (m) (6100 feet (ft)) (USFWS 2002: D–1). The southwestern willow flycatcher breeds in riparian habitats along rivers, streams, or other wetlands, where relatively dense growths of trees and shrubs are established, near or adjacent to surface water or underlain by saturated soil. Habitat characteristics such as dominant plant species, size and shape of habitat patch, canopy structure, vegetation height, and vegetation density vary widely among sites. Southwestern willow flycatchers nest in thickets of trees and shrubs ranging in height from 2 m to 30 m (6 to 98 ft). Lower-stature thickets (2–4 m or 6–13 ft tall) tend to be found at higher elevation sites, with tall-stature habitats at middle and lower elevation riparian forests. Nest sites typically have dense foliage at least from the ground level up to approximately 4 m (13 ft) above ground, although dense foliage may exist only at the shrub level, or as a low dense canopy. Nest sites typically have a dense canopy. Some of the more common tree and shrub species currently known to comprise nesting habitat include Goodings willow (*Salix gooddingii*), coyote willow (*Salix exigua*) Geyers willow (*Salix geyerana*), arroyo willow (*Salix lasiolepis*), red willow (*Salix laevigata*), yewleaf willow (*Salix taxifolia*), boxelder (*Acer negundo*), tamarisk (aka saltcedar, *Tamarix ramosissima*), and Russian olive (*Eleagnus angustifolia*) (USFWS 2002: D–2). Generally, you would not find southwestern willow flycatchers nesting in an area without willows or tamarisk. A more detailed description of historical records by state and habitat characteristics (plant species, composition, structure, biotic vegetation classification, patch size and shape, water and hydrological conditions, importance of the different stages of flycatcher habitat, etc.) can be found in the Recovery Plan (USFWS 2002: 7–19). The Recovery Plan is available on our website at *http://arizonaes.fws.gov* or by contacting the AZ Ecological Services Office (see **ADDRESSES** section).

Southwestern willow flycatchers are believed to exist and interact as groups of metapopulations (Noon and Farnsworth 2000; Lamberson *et al.* 2000; and USFWS 2002: 72). A metapopulation is a group of spatially disjunct local willow flycatcher populations connected to each other by immigration and emigration (USFWS 2002: 72). The distribution of the southwestern willow flycatcher varies geographically and is most stable where many connected sites and/or large populations exist (Coastal CA, Gila, Rio Grande Recovery Units) (Lamberson *et al.* 2000 and USFWS 2002: 72). A site may encompass a discrete breeding location, or several (USFWS 2002: 72). A territory is defined as a territorial or singing male detected during field

surveys and generally equates to an area where both a male and female are present (Sogge *et al.* 1977). For more specific information on southwestern willow flycatcher presence/absence survey protocol, please see Sogge *et al.* (1997) and any subsequent updates at *http://arizonaes.fws.gov* or *http://www.usgs.nau.edu/swwf.* Metapopulation persistence or stability is more likely to increase by adding more sites rather than adding more territories to existing sites (Lamberson *et al.* 2000; USFWS 2002: 72; and USFWS 2003). This strategy distributes birds across a greater geographical range, minimizes risk of simultaneous catastrophic loss, and avoids genetic isolation (USFWS 2002: 72). In consideration of habitat that is dynamic and widely distributed, flycatcher metapopulation stability, population connectivity, and gene flow can be achieved through: Distributing birds throughout its range; having birds close enough to each other to allow for interaction; having large populations; having a matrix of smaller sites with high connectivity; and establishing habitat close to existing breeding sites, thereby increasing the chance of colonization (USFWS 2002: 75). As the population of a site increases, the potential to disperse and colonize increases; and an increase/decrease in one population affects other populations because populations are affected by the proximity, abundance, and reproductive productivity of neighboring populations (USFWS 2002: 75).

The breeding site and patch (a ''patch'' is defined as a discrete piece of southwestern willow flycatcher habitat) fidelity of adult, nestling, breeding, and non-breeding southwestern willow flycatchers are just beginning to be understood (Kenwood and Paxton 2001; Koronkiewicz and Sogge 2001; USFWS 2002: 17). In central AZ at Roosevelt Lake (made up of a collection of ''sites''), from 1997 through 2000, 66 to 78 percent of southwestern willow flycatchers known to have survived from one breeding season to the next returned to the same breeding site; conversely, 22 to 34 percent of returning birds moved to different sites (Luff *et al.* 2000). A large percentage (75 percent) of known surviving 2000 adults returned in 2001 to their same breeding site (Kenwood and Paxton 2001). All, but three surviving birds out of 28, that were banded at Roosevelt Lake returned to Roosevelt Lake (Kenwood and Paxton 2001).

Southwestern willow flycatchers have higher site fidelity than nest fidelity and can move among sites within drainages and between drainages (Kenwood and Paxton 2001). Within-drainage movements are more common than between-drainage movements (Kenwood and Paxton 2001). From nearly 300 band recoveries, within-drainage movements generally ranged from 1.6 to 29 kilometer (km) (1 to 18 miles (mi), but were as long as 40 km (25 mi) (E. Paxton, USGS, e-mail). Movements of birds between drainages are more rare, and the distances are more varied. Banding studies have recorded 25 between-drainage movements ranging from 40 km (25 mi) to a single movement of 443 km (275 mi) (average = 130 km or 81 mi) (E. Paxton, USGS, e-mail). Movements have occurred from the Basin and Mohave Recovery Unit to the Lower Colorado Recovery Unit and from the Lower Colorado Recovery Unit to the Gila Recovery Unit.

As a neotropical migrant, migration stopover areas for the southwestern willow flycatcher, even though not used for breeding, may be critically important, (*i.e.*, essential) resources affecting productivity and survival (Sogge *et al.* 1997b; Yong and Finch 1997; Johnson and O'Brien 1998; McKernan and Braden 1999; and USFWS 2002: E–3 and 19). Use of riparian habitats along major drainages in the Southwest during migration has been documented (Sogge *et al.* 1997; Yong and Finch 1997; Johnson and O'Brien 1998; McKernan and Braden 1999; Koronkiewicz *et al.* 2003). Many of the willow flycatchers found migrating through riparian areas are detected in riparian habitats or patches that would be unsuitable for breeding (*e.g.*, the vegetation structure is too short or sparse, or the patch is too small). On these drainages, migrating flycatchers use a variety of riparian habitats, including ones dominated by native or exotic plant species, or mixtures of both (USFWS 2002: E–3). Willow flycatchers, like most small passerine birds, require food-rich stopover areas in order to replenish energy reserves and continue their northward or southward migration (Finch *et al.* 2000; USFWS 2002: E–3 and 42).

The Recovery Plan for the southwestern willow flycatcher (USFWS 2002) was completed in 2002 and provides reasonable actions believed to be required to recover and protect the bird. The Recovery Plan (USFWS 2002: 105 to 136) provides the strategy for recovering the bird to threatened status and to the point where delisting is warranted. The Recovery Plan states that either one of two criteria can be met in order to downlist the species to threatened (USFWS 2002: 77–78). The first relies on reaching a total population of 1,500 territories strategically distributed among all Recovery Units and maintained for three years with habitat protections (USFWS 2002: 77–78). Habitat protections include a variety of options such as Habitat Conservation Plans, conservation easements, and Safe Harbor Agreements. The second criterion calls for reaching a population of 1,950 territories also strategically distributed among all Recovery and Management Units for five years without additional habitat protection (USFWS 2002: 77–78). For delisting, the Recovery Plan recommends a minimum of 1,950 territories must be strategically distributed among all Recovery and Management Units, and these habitats must be protected from threats and create/secure sufficient habitat to assure maintenance of these populations and/or habitat for the foreseeable future through development and implementation of conservation management agreements (USFWS 2002: 79–80). All of the delisting criteria must be accomplished and demonstrated their effectiveness for a period of 5 years (USFWS 2002: 79–80).

Threats

The reasons for the decline of the southwestern willow flycatcher and current threats it faces are numerous, complex, and interrelated (USFWS 1995 and 2002: 33; Marshall and Stoleson 2000). However, these factors vary in severity over the landscape, and at any given locale, several are likely present, with cumulative and combined effects (USFWS 2002: 33).

The primary cause of the flycatcher's decline is loss and modification of habitat (USFWS 2002: 33). Historically, these habitats have always been dynamic (*i.e.* habitat size and location evolve over time), due to natural disturbance and regeneration events such as floods, fire, and drought (USFWS 2002: 33–34). With increasing human populations and the related industrial, agricultural, and urban developments, these habitats have been further modified, reduced, and destroyed by various mechanisms (USFWS 2002: 34). Riparian ecosystems have declined from reductions in water flow, interruptions in natural hydrological events and cycles, physical modifications to streams, modification of native plant communities by invasion of exotic species, and direct removal of riparian vegetation (USFWS 2002: 34).

The major mechanisms causing loss and modification of riparian ecosystems, increases in exotic plant species, and quality of riparian habitat, are water-management and land-use practices such as dam operations, water

diversion and groundwater pumping, river channelization and bank stabilization, control of phreatophytes (plants whose roots are associated with the water table), livestock grazing, recreation, fire, agricultural development, urbanization, and changes in the riparian plant communities. (USFWS 2002: 33–42). Wintering habitat has also been lost and modified for this and other neotropical migratory birds (Finch 1991; Sherry and Holmes 1993) due to heavy agriculture uses and a decrease in lowland forest and wet areas (habitats in which southwestern willow flycatchers overwinter) (Koronkiewiez *et al.* 1998). A more detailed discussion of these threats can be found in the Recovery Plan (USFWS 2002: 33–42).

In a review of historical and contemporary records and survey data of southwestern willow flycatchers throughout its range, Unitt (1987) noted that the species has ''declined precipitously'' and that ''the population is clearly much smaller now than 50 years ago.'' He believed the total was ''well under'' 1,000 pairs, more likely 500 (Unitt 1987). When the southwestern willow flycatcher was listed as endangered in 1995, approximately 350 territories were known to exist (Sogge *et al.* 2001). At the end of the 2002 breeding season, the minimum known number of southwestern willow flycatcher territories was 1,153 (455 in AZ, 238 in CA, 60 in CO, 344 in NM, 51 in NV, and 5 in UT) (Sogge *et al.* 2003). This number reflects the results of the most recent survey data. This also does not include flycatchers likely to occur on some Tribal and private lands. Though much suitable habitat remains to be surveyed, the rate of discovery of new nesting pairs at new locations has leveled off (Sogge *et al.* 2001). Unitt (1987) estimated that the total flycatcher population may be 500 to 1000 pairs; thus, nearly a decade of intense survey efforts have found little more than slightly above the upper end of Unitt's 1987 estimate (USFWS 2002: 29). Moreover, survey results reveal a consistent pattern range wide; the southwestern willow flycatcher population as a whole is comprised of extremely small, widely separated breeding groups or unmated flycatchers (74 percent of the breeding sites have five or fewer territories) (Sogge *et al.* 2003).

The 1,153 southwestern willow flycatcher territories are distributed in a large number of very small breeding groups, and only a small number of relatively large breeding groups (USFWS 2002: 41). These isolated breeding groups are vulnerable to local extirpation from floods, fire, severe weather, disease, and shifts in birth/death rates and sex ratios (USFWS 2002: 41). Marshall and Stoleson (2000) noted, ''Even moderate variation in stochastic (random) factors (such as floods or fires) that might be sustained by larger populations can reduce a small population below a threshold level from which it cannot recover. The persistence of small populations depends in part on immigration from nearby populations, at least in some years (Stacey and Taper 1992). The small, isolated nature of current southwestern willow flycatcher populations exacerbates the risk of local extirpation by reducing the likelihood of immigration among populations.'' The vulnerability of the few relatively large populations makes the above threats particularly acute (USFWS 2002: 41).

Previous Federal Actions

On January 25, 1992, a coalition of conservation organizations petitioned the Service, requesting listing of the southwestern willow flycatcher (*E t. extimus*) as an endangered species, under the Act. The petitioners also appealed for emergency listing, and designation of critical habitat. On September 1, 1992, we published a finding that the petition presented substantial information indicating that listing may be warranted and requested public comments and biological data on the species (57 FR 39664). On July 23, 1993, we published a proposal to list southwestern willow flycatcher as endangered with critical habitat (58 FR 39495), and again requested public comments and biological data on the species. We published a final rule to list southwestern willow flycatcher as endangered on February 27, 1995 (60 FR 10694). We deferred the final designation of critical habitat for this endangered species until July 23, 1995, pursuant to 16 U.S.C. 1533(b)(6)(C), citing issues identified in public comments, new information, and the lack of the economic information necessary to perform an economic analysis.

Following the final listing, we took no immediate action on the proposal to designate critical habitat due to a listing moratorium and a series of rescissions of listing funds imposed by Congress from April 1995 to April 1996. On March 20, 1997, the U.S. District Court of Arizona, in response to a suit by the (Southwest) Center for Biological Diversity, ordered us to designate critical habitat for the southwestern willow flycatcher within 120 days. On July 22, 1997, we published a final critical habitat designation for southwestern willow flycatcher along 964 river km (599 river mi) in AZ, CA, and NM (62 FR 39129) (USFWS 1997a). We published a correction notice on August 20, 1997, on the lateral extent of critical habitat (62 FR 44228) (USFWS 1997b).

As a result of a suit from the New Mexico Cattlegrower's Association initiated in March 1998, on May 11, 2001, the 10th Circuit Court of Appeals vacated (*i.e.*, set aside) critical habitat, citing a faulty economic analysis, and instructed us to issue a new critical habitat designation. On September 30, 2003, in a complaint brought by the Center for Biological Diversity, the U.S. District Court of New Mexico instructed us to propose critical habitat by September 30, 2004, and publish a final rule by September 30, 2005. On January 21, 2004, we published a Notice of Intent to prepare an Environmental Assessment pursuant to NEPA and announced scoping meetings (69 FR 2940). We requested public comments on information about the flycatcher, management plans, and the scope of the environmental analysis, including alternatives that should be analyzed. We also held eight public scoping meetings in January and February, 2004, in Phoenix, AZ; Silver City and Albuquerque, NM; Alamosa, CO; Las Vegas, NV; and Lake Isabella, Chino, and Escondido, CA.

Critical Habitat

Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands. Under section 7 of the Act, Federal agencies must consult with the Service on activities they undertake, fund, or permit that may affect critical habitat and lead to its destruction or adverse modification.

However, the Act prohibits unauthorized take of listed species and requires consultation for activities that may affect them, including habitat alterations, regardless of whether critical habitat has been designated.

To be included in a critical habitat designation, habitat must be either a specific area within the geographic area occupied by the species on which are found those physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)) and which may require special management considerations or protection, or be specific areas outside of the geographic area occupied by the species which are determined to be essential to the conservation of the species. Section 3(5)(c) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species. When we designate critical habitat, we may not have the information necessary to identify all areas that are essential for the conservation of the species. Nevertheless, we are required to designate those areas we consider to be essential, using the best information available to us. Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best available scientific and commercial data demonstrate that unoccupied areas are essential for the conservation needs of the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, effects to national security, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions we make represent the best scientific and commercial data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, information may be obtained from the listing package, recovery plans, articles in peer-reviewed journals, conservation plans developed by States and counties or other entities that develop HCPs, scientific status surveys and studies, and biological assessments. In the absence of published data unpublished materials and expert opinion or personal knowledge is used.

Areas that support populations, but are outside the critical habitat designation, are still important to the species. Because of that they will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for different approaches.

Methods

In determining areas that are essential to conserve the southwestern willow flycatcher, we used the best scientific and commercial data available. We have reviewed the overall approach to the conservation of the southwestern willow flycatcher compiled in the Recovery Plan (USFWS 2002) and undertaken by local, State, Federal, and Tribal agencies, and private and non-governmental organizations operating within the species' range since its listing in 1993.

We have also reviewed available information that pertains to the habitat requirements of this species. The material included data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles, agency reports, and databases; and regional Geographic Information System (GIS) coverages and habitat models.

A variety of sources were used to determine territory site information and locations. The Recovery Plan (USFWS 2002), the U.S. Geological Survey (USGS 2003) southwestern willow flycatcher rangewide database, and 2002 rangewide status report of the flycatcher (Sogge *et al.* 2003) were the most authoritative and complete sources of information. The database maintained by USGS, Colorado Plateau Research Station, Flagstaff, AZ (2003), compiles the results of surveys conducted throughout the bird's range. We had compiled 2003 data from AZ (Smith *et al.* 2004) and NM (S.O. Williams, NMGFD, e-mail). AZ Game and Fish Department's Nongame Branch, in Phoenix, AZ, and SWCA, Inc. (Koronkiewicz *et al.* 2003; L. Dickerson, SWCA, Inc., e-mail) generated migration data for AZ. A summary of known historical breeding records can be found in the Recovery Plan (USFWS 2002: 8 to 10). For more detailed information regarding the threats to the southwestern willow flycatcher and its habitat see the Recovery Plan (USFWS 2002: 33 to 42) and the listing rule (February 27, 1995; 60 FR 10694).

In the development of the proposal of critical habitat for the southwestern willow flycatcher, we determined which lands are essential to the conservation of the species by defining the physical and biological features essential to the species' conservation and delineating the specific areas defined by them. We then evaluated those lands determined to be essential to ascertain if any specific areas are appropriate for exclusion from critical habitat pursuant to section 4(b)(2) of the Act. On the basis of our evaluation, we have determined that the benefits of excluding certain approved and pending HCPs and lands owned and managed by the Department of Defense from critical habitat for the southwestern willow flycatcher outweighs the benefits of their inclusion, and have subsequently excluded those lands from this proposed designation of critical habitat for this subspecies pursuant to section 4(b)(2) of the Act (refer to ''Exclusions

under Section 4(b)(2) of the Act'' section below). The resulting proposal includes a subset of lands essential to the conservation of the southwestern willow flycatcher.

Maps included with this proposal illustrate lands essential to the conservation of the southwestern willow flycatcher, with lands proposed as critical habitat and lands excluded from this proposal delineated separately. More detailed maps show lands determined to be essential to the species, which are color coded to clearly show those lands proposed and those excluded from this proposal, and are available from the AZ Ecological Services Office (see **ADDRESSES** section) or from the Internet at *http://arizonaes.fws.gov.*

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These features include but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for germination or seed dispersal; and habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

The areas proposed for designation as critical habitat are designed to provide sufficient riparian habitat for breeding, non-breeding, territorial, dispersing, and migrating, southwestern willow flycatchers and to sustain southwestern willow flycatchers across their range. Although no areas are being proposed as critical habitat solely because they serve as a migration corridor, rather areas proposed serve a variety of functions that may include use by southwestern willow flycatchers as migration habitat. The habitat components essential for conservation of the species were determined from studies of southwestern willow flycatcher behavior and habitat use throughout the birds range (see ''Background'' section above). Due to the natural history of this neotropical migrant and the dynamic nature of the riparian environments in which they are found (USFWS 2002: Chapter II), one or more of the primary constituent elements described below are found throughout each of the units that are being proposed as critical habitat.

In general, all the constituent elements of critical habitat for the southwestern willow flycatcher are found in the riparian ecosystem within the 100-year floodplain or flood prone area. Southwestern willow flycatchers use riparian habitat for feeding, sheltering, and cover while breeding and migrating. Because riparian vegetation is prone to periodic disturbance (*e.g.* flooding), flycatcher habitat is ephemeral and its distribution is dynamic in nature (USFWS 2002: 17). Flycatcher habitat may become unsuitable for breeding through maturation or disturbance, but suitable for migration or foraging (though this may be only temporary, and patches may cycle back into suitability for breeding) (USFWS 2002: 17). Therefore, it is not realistic to assume that any given breeding habitat patch will remain suitable over the long-term, or persist in the same location (USFWS 2002: 17). Over a five-year period, southwestern willow flycatcher habitat can, in optimum conditions, germinate, be used for migration or foraging, continue to grow, and eventually be used for nesting. Thus, habitat that is not currently suitable for nesting at a specific time, but useful for foraging and/or migration can be essential to the conservation of the flycatcher. Feeding sites and migration stopover areas are essential components of the flycatcher's survival, productivity, and health, and they can also be areas where new breeding habitat develops as nesting sites are lost or degraded (USFWS 2002: 42).

Based on our current knowledge of the life history and ecology of the southwestern willow flycatcher and the relationship of its essential life history functions to its habitat, as summarized in the ''Status and Threats'' sections above and in more detail in the Recovery Plan (USFWS 2002: Chapter II), it is important to recognize the combined nature of the primary constituent elements. Specifically, the relationships between river function, hydrology, floodplains, aquifers, and plant growth, form the environment essential to the conservation of the southwestern willow flycatcher.

The natural hydrologic regime and supply of (and interaction between) surface and subsurface water will be a driving factor in the maintenance, growth, recycling, and regeneration of southwestern willow flycatcher habitat (USFWS 2002: 16). As streams reach the lowlands, their gradients typically flatten and surrounding terrain open into broader floodplains (USFWS 2002: 32). Combine this setting with the integrity of stream flow frequency, magnitude, duration, and timing (Poff *et al.* 1997), and conditions will occur that provide for proper river channel configuration, sediment deposition, periodic inundation, recharged aquifers, lateral channel movement, and elevated groundwater tables throughout the floodplain that develop flycatcher habitat (USFWS 2002: 16). Maintaining existing river access to the floodplain when overbank flooding occurs is integral to allow deposition of fine moist soils, water, nutrients, and seeds that provide essential material for plant germination and growth. An abundance and distribution of fine sediments extending farther laterally across the floodplain and deeper underneath the surface retains much more subsurface water, which in turn supplies water for the development of flycatcher habitat and micro-habitat conditions (USFWS 2002: 16). The interconnected interaction between groundwater and surface water contributes to the quality of riparian community (structure and plant species), and will influence the germination, density, vigor, composition, and ability to regenerate and maintain itself (AZ Department of Water Resources 1994).

The specific biological and physical features, otherwise referred to as the primary constituent elements, essential to the conservation of the southwestern willow flycatcher are:

(1) Nesting habitat with trees and shrubs that include, but are not limited to, willow species and boxelder;

(2) Dense riparian vegetation with thickets of trees and shrubs ranging in height from 2 m to 30 m (6 to 98 ft) with lower-stature thickets of (2–4 m or 6–13 ft tall) found at higher elevation riparian forests and tall-stature thickets at found at middle- and lower-elevation riparian forests;

(3) Areas of dense riparian foliage at least from the ground level up to approximately 4 m (13 ft) above ground or dense foliage only at the shrub level, or as a low, dense tree canopy;

(4) Sites for nesting that contain a dense tree and/or shrub canopy (the amount of cover provided by tree and shrub branches measured from the ground) (*i.e.* a tree or shrub canopy with densities ranging from 50 percent to 100 percent);

(5) Dense patches of riparian forests that are interspersed with small openings of open water or marsh or shorter/sparser vegetation, that creates a mosaic that is not uniformly dense. Patch size may be as small as 0.1 ha (0.25 ac) or as large as 70 ha (175 ac); and

(6) A variety of insect prey populations, including but not limited to, wasps and bees (Hymenoptera); flies (Diptera); beetles (Coleoptera); butterflies/moths and caterpillars (Lepidoptera); and spittlebugs (Homoptera).

A description of the essential environment as it relates to the specific primary constituent elements required of the southwestern willow flycatcher is described below.

Space for Individual and Population Growth and Normal Behavior

Streams of lower gradient and/or more open valleys with a wide/broad floodplain are the geological settings that support willow flycatcher breeding habitat from near sea level to over 2000 m (6100 ft) in southern CA, southern NV, southern UT, southern CO, AZ, and NM (USFWS 2002: 7). Lands with moist conditions which support riparian plant communities are areas that provide habitat for the southwestern willow flycatcher. Conditions like these develop in lower floodplains as well as where streams enter impoundments, either natural (*e.g.*, beaver ponds) or human-made (reservoirs). Low-gradient stream conditions may also occur high in watersheds, as in the marshy mountain meadows supporting flycatchers in the headwaters of the Little Colorado River near Greer, AZ, or the flat-gradient portions of the upper Rio Grande in south-central CO and northern NM (USFWS 2002: 32). Sometimes, the low-gradient wider floodplain exists only at the habitat patch itself, on streams that are generally steeper when viewed on the large scale (*e.g.*, percent gradient over kilometers or miles) (USFWS 2002).

Relatively steep, confined streams can also support flycatcher habitats (USFWS 2002: D–13). The San Luis Rey River in CA supports a substantial flycatcher population, and stands out among flycatcher habitats as having a relatively high gradient and being confined in a fairly narrow, steep-sided valley (USFWS 2002: D–13). It is important to note that even a steep, confined canyon or mountain stream may present local conditions where just a portion of an acre (ac) or hectare (ha) of flycatcher habitat may develop (USFWS 2002; D–13). Such sites are important individually, and in aggregate (USFWS 2002: D–13). Flycatchers are known to occupy very small, isolated habitat patches, and may occur in fairly high densities within those patches.

Water

Flycatcher nesting habitat is largely associated with perennial or persistent stream flow that can support the expanse of vegetation characteristics needed by the flycatcher, but can persist on intermittent or ephemeral streams that retain local conditions favorable to riparian vegetation (USFWS 2002: D–12). The range and variety of stream flow conditions (frequency, magnitude, duration, and timing) (Poff *et al.* 1997) that will establish and maintain flycatcher habitat can arise in different types of both regulated and unregulated flow regimes throughout its range (USFWS 2002: D–12). Also, flow conditions that will establish and maintain flycatcher habitat can be achieved in regulated streams, depending on scale of operation and the interaction of the primary physical characteristics of the landscape (USFWS 2002: D–12).

In the southwest, natural hydrological conditions at a flycatcher breeding site can vary remarkably within a season and between years (USFWS 2002: D–12). At some locations, particularly during drier years, water or saturated soil is only present early in the breeding season (*i.e.*, May and part of June) (USFWS 2002: D–12). At other sites, vegetation may be immersed in standing water during a wet year, but be hundreds of meters from surface water in dry years (USFWS 2002: D–12). This is particularly true of reservoir sites such as the Kern River at Lake Isabella, CA, Tonto Creek and Salt River at Roosevelt Lake, AZ, and the Rio Grande near Elephant Butte Reservoir, NM (USFWS 2002: D–12). Similarly, where a river channel has changed naturally (Sferra *et al.* 1997), there may be a total absence of water or visibly saturated soil for several years. In such cases, the riparian vegetation and any flycatchers breeding within it may persist for several years (USFWS 2002: D–12).

In some areas, natural or managed hydrologic cycles can create temporary flycatcher habitat, but may not be able to support it for an extended amount of time, or may support varying amounts of habitat at different points in the cycle. Some dam operations create varied situations that allow different plant species to thrive when water is released below a dam, held in a lake, or removed from a lakebed, and consequently, varying degrees of flycatcher habitat are available as a result of dam operations (USFWS 2002: 33).

The riparian vegetation that constitutes southwestern willow flycatcher breeding habitat requires substantial water (USFWS 2002: D–12). Because southwestern willow flycatcher breeding habitat is often where there is slow moving or still water we speculate these slow and still water conditions may also be important in influencing the production of insect prey base for flycatcher food (USFWS 2002: D–12)

Sites for Germination or Seed Dispersal

Subsurface hydrologic conditions may, in some places (particularly at the more arid locations of the southwest), be equally important to surface water conditions in determining riparian vegetation patterns (Lichivar and Wakely 2004). Where groundwater levels are elevated to the point that riparian forest plants can directly access those waters it can be an area essential for nesting, foraging, migrating, nonbreeding, dispersing, or unmated southwestern willow flycatchers, and we speculate that these elevated groundwaters help create moist soil conditions believed to be important for micro-habitat nesting conditions and prey populations (USFWS 2002: 11).

Depth to groundwater plays an important part in the distribution of riparian vegetation (AZ Department of Water Resources 1994) and consequently, southwestern willow flycatcher habitat. The greater the depth to groundwater below the land surface, the less abundant the riparian vegetation (AZ Department of Water Resources 1994). Localized perched aquifers (*i.e.* a saturated area that sits above the main water table) can and do support some riparian habitat, but these systems are not extensive (AZ Department of Water Resources 1994).

The abundance and distribution of fine sediment deposited on floodplains is critical for the development, abundance, distribution, maintenance, and germination of flycatcher habitat, and possibly conditions for successful breeding (USFWS 2002: 16). In almost all cases, moist or saturated soil is present at or near breeding sites during wet or non-drought years (USFWS 2002: 11). Thus, fine sediments provide seeds beds for flycatcher habitat. The saturated soil and adjacent surface water may be present early in the breeding season, but only damp soil is present by late June or early July (Muiznieks *et al.* 1994; USFWS 2002: D–3). Microhabitat features such as temperature and humidity, facilitated by moist/saturated soil, are believed to play an important role where flycatchers are detected and nest, their breeding success, and availability/abundance of food resources (USFWS 2002). However, as in all natural systems the amount and duration of flooding is dependent on natural cycles.

Reproduction and Rearing of Offspring

Southwestern willow flycatchers nest in thickets of trees and shrubs ranging in height from 2 m to 30 m (6 to 98 ft) (USFWS 2002: D–3). Lower-stature thickets (2–4 m or 6–13 ft tall) tend to be found at higher elevation sites, with tall-stature habitats at middle- and lower-elevation riparian forests (USFWS 2002: D–2). Nest sites typically have dense foliage at least from the ground level up to approximately 4 m (13 ft) above ground, although dense foliage may exist only at the shrub level, or as a low, dense tree canopy (USFWS 2002: D–3).

Riparian habitat characteristics such as dominant plant species, size and shape of habitat patches, tree canopy structure, vegetation height, and vegetation density vary widely among sites, but are essential qualities of southwestern willow flycatcher breeding habitat (USFWS 2002: D–1). The accumulating knowledge of flycatcher breeding sites reveals important areas of similarity which constitute the basic concept of what is suitable breeding habitat (USFWS 2002: D–2). These habitat features are generally discussed below.

Regardless of the plant species composition or height, occupied breeding sites usually consist of dense vegetation in the patch interior, or an aggregate of dense patches interspersed with openings (USFWS 2002: 11). In most cases this dense vegetation occurs within the first 3–4 m (10–13 ft) above ground (USFWS 2002: 11). These dense patches are often interspersed with small openings, open water or marsh, or shorter/sparser vegetation, creating a mosaic that is not uniformly dense (USFWS 2002: 11).

Common tree and shrub species currently known to comprise nesting habitat include willow species, boxelder, tamarisk, and Russian olive (USFWS 2002: D–2, 11). Other plant species used for nesting have been buttonbush (*Cephalanthus occidentalis*), cottonwood, stinging nettle (*Urtica dioica*), alder (*Alnus rhombifolia*, *Alnus oblongifolia*, *Alnus tenuifolia*), velvet ash (*Fraxinus velutina*), poison hemlock (*Conium maculatum*), blackberry (*Rubus ursinus*), seep willow (*Baccharis salicifolia*, *Baccharis glutinosa*), oak (*Quercus agrifolia*, *Quercus chrysolepis*), rose (*Rosa californica*, *Rosa arizonica*, *Rosa multiflora*), sycamore (*Platinus wrightii*), giant reed (*Arundo donax*), false indigo (*Amorpha californica*), Pacific poison ivy (*Toxicodendron diversilobum*), grape (*Vitus arizonica*), Virginia creeper (*Parthenocissus quinquefolia*), Siberian elm (*Ulmus pumila*), and walnut (*Juglans hindsii*) (USFWS 2002: D–3, 5, and 9). Other species used by nesting southwestern willow flycatchers may become known over time as more studies and surveys occur.

Nest sites typically have a dense tree and/or shrub canopy (USFWS 2002: D–3). Canopy density (the amount of cover provided by tree and shrub branches measured from the ground) at various nest sites ranged from 50 percent to 100 percent.

Southwestern willow flycatcher breeding habitat can be generally organized into three broad habitat types—those dominated by native vegetation, by exotic vegetation, and those with mixed native and exotic plants. These broad habitat descriptors reflect the fact that southwestern willow flycatchers now inhabit riparian habitats dominated by both native and non-native plant species.

The riparian patches used by breeding flycatchers vary in size and shape (USFWS 2002: D–2). They may be relatively dense, linear, contiguous stands or irregularly-shaped mosaics of dense vegetation with open areas (USFWS 2002: D–2 and 11). Southwestern willow flycatchers have been recorded nesting in patches as small as 0.1 ha (0.25 ac) along the Rio Grande (Cooper 1997), and as large as 70 ha (175 ac) in the upper Gila River in NM (Cooper 1997). The mean reported size of flycatcher breeding patches was 8.6 ha (21.2 ac). The majority of sites were toward the smaller end, as evidenced by a median patch size of 1.8 ha (4.4 ac) (USFWS 2002: 17). Mean patch size of breeding sites supporting 10 or more flycatcher territories was 24.9 ha (62.2 ac). Aggregations of occupied patches within a breeding site may create a riparian mosaic as large as 200 ha (494 ac) or more, such as at the Kern River (Whitfield 2002), Roosevelt Lake (Paradzick *et al.* 1999) and Lake Mead (McKernan 1997). Based on the number of flycatcher territories reported in each patch, it required an average of 1.1 ha (2.7 ac) of dense riparian habitat for each territory in the patch (USFWS 2002: 81, D–11). Because breeding patches include areas that are not actively defended as territories, this does not equate to an average territory size.

Flycatchers often cluster their territories into small portions of riparian sites (Whitfield and Enos 1996; Paxton *et al.* 1997; Sferra *et al.* 1997; Sogge *et al.* 1997), and major portions of the site may be occupied irregularly or not at all. Recent habitat modeling based on remote sensing and GIS data has found that breeding site occupancy at reservoir sites in AZ is influenced by vegetation characteristics of habitat adjacent to the actual occupied portion of a breeding site (Hatten and Paradzick 2003); therefore, areas adjacent to breeding sites can be an important component of a breeding site. How size and shape of riparian patches relate to factors such as flycatcher site selection and fidelity, reproductive success, predation, and brood parasitism is unknown (USFWS 2002: D–11).

Flycatchers are generally not found nesting in confined floodplains (*i.e.* those bound within a canyon) (Hatten and Paradzick 2003) or where only a single narrow strip of riparian vegetation less than approximately 10 m (33 ft) wide develops (USFWS 2002: D–11). While riparian vegetation too mature, immature, or of lesser quality in abundance and breadth may not be used for nesting, it can be used by breeders for foraging (especially if it extends out from larger patches) or during migration for foraging, cover, and shelter (Sogge and Tibbitts 1994; Sogge and Marshall 2000).

Food

We speculate that willow flycatcher food availability may be largely influenced by the density and species of vegetation, proximity to and presence of water, saturated soil levels, and microclimate features such as temperature and humidity (USFWS 2002). Flycatchers forage within and above the canopy, along the patch edge, in openings within the territory, over water, and from tall trees as well as herbaceous ground cover (Bent 1960; McCabe 1991). Willow flycatchers employ a ''sit and wait'' foraging tactic, with foraging bouts interspersed with longer periods of perching (Prescott and Middleton 1988). The willow flycatcher is somewhat of an insect generalist (USFWS 2002: 26), taking a wide range of invertebrate prey including flying, and ground-, and vegetation-dwelling species of terrestrial and aquatic origins (Drost *et al.* 2003). Wasps and bees (Hymenoptera) are common food items, as are flies (Diptera), beetles (Coleoptera), butterflies/moths and caterpillars (Lepidoptera), and spittlebugs (Homoptera) (Beal 1912; McCabe 1991). Plant foods such as small fruits have been reported (Beal 1912; Roberts 1932; Imhof 1962), but are not a significant food during the breeding season (McCabe 1991). Diet studies of adult southwestern willow flycatchers (Drost *et al.* 1997; DeLay *et al.* 1999) found a wide range of prey taken. Major prey items were small (flying ants) to large (dragonflies) flying insects, with

Hymenoptera, Diptera, and Hemiptera (true bugs) comprising half of the prey items. Willow flycatchers also took non-flying species, particularly Lepidoptera larvae. From an analysis of southwestern willow flycatcher diet along the South Fork of the Kern River, CA (Drost *et al.* 2003), flycatchers consumed a variety of prey from 12 different insect groups. Willow flycatchers have been identified targeting seasonal hatchings of aquatic insects along the Salt River arm of Roosevelt Lake, AZ (E. Paxton, USGS, e-mail).

Primary Constituent Elements Summary

The discussion above outlines those physical and biological features essential to the southwestern willow flycatcher and presents our rationale as to why those features were selected. The primary constituent elements described above include the essential features of the dynamic riverine environment that germinates, develops, maintains, and regenerates the necessary riparian forest and provides food for nesting, foraging, non-breeding, unmated, and migrating southwestern willow flycatchers. These habitat features are essential for the flycatcher to maintain metapopulation stability, connectivity, gene flow, and protect against catastrophic loss for disjunct populations distributed across a large geographic and elevational range. All areas proposed as critical habitat for southwestern willow flycatcher are within the geographical area occupied by the species and contain enough of the primary constituent elements to allow for the biological functions that are essential for its conservation.

Criteria for Defining Essential Habitat

Restoring an endangered or threatened species to the point where it is recovered is a primary goal of our Endangered Species Program. To help guide the recovery effort, we are required to prepare and implement recovery plans for all of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed. A final recovery plan formalizes the recovery strategy for a species, but is not a regulatory document (*i.e.*, recovery plans are advisory documents because there are no specific protections, prohibitions, or requirements afforded to a species based solely on a recovery plan). Critical habitat contributes to the overall recovery strategy for listed species, but does not by itself achieve recovery plan goals.

To identify areas that are essential to the conservation of the southwestern willow flycatcher, we first considered the Recovery Plan's strategy, rationale, and science behind the conservation of the flycatcher and removing the threat of extinction (USFWS 2002: 61–95). Because of the wide distribution of this bird and the dynamic nature of its habitat, we considered the southwestern willow flycatcher population assuming a metapopulation model, gene flow, ecological connectivity among disjunct populations, and prevention of catastrophic losses. In addition, information provided during the comment periods for this proposed rule and the draft economic and draft NEPA analyses will be evaluated and considered in the development of the final designation for southwestern willow flycatcher.

The Recovery Plan identifies important factors to consider in minimizing the likelihood of extinction: (1) The territory is the unit of measure; (2) populations should be distributed throughout the bird's range; (3) populations should be distributed close enough to each other to allow for movement among them; (4) large populations contribute most to metapopulation stability; smaller populations can contribute to metapopulation stability when arrayed in a matrix with high connectivity; (5) as the population of a site increases, the potential to disperse and colonize increases; (6) increase/decrease in one population affects other populations; (7) some Recovery/Management Units have stable metapopulations, others do not; (8) maintaining/augmenting existing populations is a greater priority than establishing new populations; and (9) establishing habitat close to existing breeding sites increases the chance of colonization.

The Recovery Plan (USFWS 2002) outlined a recommended recovery strategy for the southwestern willow flycatcher. We reviewed and considered the pertinent information contained in the Recovery Plan (USFWS 2002) in developing this proposed critical habitat designation because it represents a compilation of the best scientific data available to us. We are required to base listing and critical habitat decisions on the best scientific and commercial data available (16 U.S.C. 1533(b)(1)(A)). We may not delay making our determinations until more information is available, nor can we be required to gather more information before making our determination (*Southwest Center for Biological Diversity* v. *Babbitt*, 215 F. 3d 58 (D.C. Cir. 2000)). This proposed critical habitat designation focuses on those Recovery Plan recommendations that we believe are important in determining areas that are essential to the conservation of the species.

The focus of our proposal is on a conservation strategy of protecting large populations as well as small populations with high connectivity (USFWS 2002: 74 to 75). Large populations, centrally located, contribute the most to metapopulation stability, especially if other breeding populations are nearby (USFWS 2002: 74). Large populations persist longer than small ones, and produce more dispersers capable of emigrating to other populations or colonizing new areas (USFWS 2002: 74). Smaller populations in high connectivity can provide as much or more stability than a single isolated population with the same number of territories because of the potential to disperse colonizers throughout the network of sites (USFWS 2002: 75). The approach used to define critical habitat areas also supports other key central strategies tied to flycatcher conservation identified in the Recovery Plan (USFWS 2002: 74 to 76) such as: (1) Populations should be distributed close enough to each other to allow for movement, (2) maintaining/augmenting existing populations is a greater priority than establishing new populations, and (3) a population's increase improves the potential to disperse and colonize.

Because large populations, as well as small populations with high connectivity, contribute the most to metapopulation stability (USFWS 2002: 74), we identified these areas to help guide the delineation of areas essential to the conservation of the southwestern willow flycatcher, *i.e.*, critical habitat. This rule defines a large population as a single site or collection of smaller connected sites that support 10 or more territories. We chose the baseline survey period as the time from 1993 to 2003 (USFWS 2002: 23; Sogge *et al.* 2003; Smith *et al.* 2004; S.O. Williams, NMGFD, e-mail 2004; U.S. Geological Survey 2003). This includes all known reliable survey information that is available to us. We chose 10 or more territories to identify a large population area because the population viability analysis indicates a breeding site exhibits greatest long-term stability with at least 10 territories (Lamberson *et al.* 2000; USFWS 2002: 72).

We propose to designate stream ''segments'' (which in some places include exposed reservoir bottoms) as critical habitat for the southwestern willow flycatcher. The reaches designated provide sufficient critical

habitat to accommodate expected flycatcher habitat (nesting, foraging, migrating, regenerating, etc.) changes in locations or conditions from those that exist presently. . The actual riparian habitat in these areas is expected to expand, contract, or change as a result of flooding, drought, inundation, and changes in floodplains and river channels (USFWS 2002: 18, D–13 to 15) that result from current flow management practices and priorities. Stream segments include breeding sites in high connectivity and other essential flycatcher habitat components needed to conserve the subspecies. Those other essential components of flycatcher habitat (foraging habitat, habitat for non-breeding flycatchers, migratory habitat, regenerating habitat, streams, elevated groundwater tables, moist soils, flying insects, and other alluvial floodplain habitats, etc.) adjacent to or between sites, along with the dynamic process of riparian vegetation succession and river hydrology, provide current and future habitat for the flycatcher which is dependent upon vegetation succession. As a result, these segments represent the boundaries within which flycatcher habitat of all types is expected to persist over time. We used expert opinion, location of territories, habitat models, existing dam and river operations, and the physical and biological features essential to flycatcher conservation to determine the boundaries of each river segment that would be proposed as critical habitat for the subspecies.

In order to determine the degree of connectivity to assign populations, we examined the known between-year within-drainage movements of southwestern willow flycatchers (Luff *et al.* 2000; Kenwood and Paxton 2001; E. Paxton, USGS, e-mail). Through banding studies since 1997 in central AZ and the lower Colorado River in AZ, CA, and NV, scientists have re-sighted almost 300 banded southwestern willow flycatchers that, between years, moved within the same drainage (Luff *et al.* 2000; Kenwood and Paxton 2001; E. Paxton, USGS, e-mail). Most recorded between-year movements occurred within the same drainage from 1.6 to 29 km (1 and 18 mi), but movements as far as 40 km (25 mi) were recorded (Luff *et al.* 2000; Kenwood and Paxton 2001; E. Paxton, USGS, e-mail). However, we also recognize that birds move between drainages (USFWS 2002: 22). Therefore, as a result of the known movements of banded southwestern willow flycatchers and the ability of birds to move long distances between drainages, we chose a 29 km (18 mi) radius as the distance to identify where flycatcher territories and their essential habitat is found. As a result of defining the degree of connectivity to assign populations, we identified territories (with a minimum of 10 territories) and their essential habitat within a 29 km (18 mi) radius of each other to include as proposed critical habitat.

However, large populations or small populations with high connectivity did not exist throughout the entire range of the bird (USFWS 2002: 30–33; 84 (Table 9)). For example, in the Amargosa, Santa Cruz, Hassayampa/Agua Fria, San Juan, Lower Rio Grande, and Powell Flycatcher Management units there are no large sites with 10 or more territories, nor are any known territories in these Units in high connectivity (<40 km/25 mi) with a large population (≥10 territories). We are not proposing to designate these areas as critical habitat because the areas do not meet the criteria that we established for being essential to the conservation of the subspecies.

Therefore, we believe our criteria for determining what is essential to the conservation of the southwestern willow flycatcher represents the best approach toward identifying essential habitat, there were areas, due to the wide diversity and condition of habitat across the bird's range and complexity of the flycatchers' needs, where we believed it was necessary to consider other factors. These other factors included: (1) The unique nature of the Coastal CA Recovery Unit because of the high connectivity across the entire Recovery Unit and fragmented nature of the habitat; (2) management units where habitat is limited; and (3) key migratory habitat. As discussed below, in these instances we relied on Recovery Plan recommendations and conservation goals, habitat needs of the flycatcher, as well as expert opinion.

Unlike the other Recovery Units in the flycatcher's range, flycatcher populations in CA exist on a greater number of streams, and are almost all located in close proximity to one another. Because of this, we scrutinized our selection of stream segments in determining which areas identified provided those locations essential for the flycatcher and possessing the greatest degree of stability. In all four Management Units, we ensured that we selected the dominant streams with the greatest number of territories (Santa Ynez, Santa Ana, Santa Margarita and San Luis Rey Rivers) in addition to many other stream segments to allow for population connectivity, metapopulation stability, growth, dynamic river processes, and protection against catastrophic loss. We relied on expert opinion, habitat and conservation goal recommendations from the Recovery Plan, and proximity of habitats in order to provide river segments with large populations in high connectivity throughout the Recovery Unit. Consequently, there are stream segments in the Coastal CA Recovery Unit, specifically in the Santa Clara, Santa Ana, and San Diego Management units in CA, where lone territories exist that fall within the 29 km (18 mi) radius of each other, but are not being proposed as critical habitat because they, when considered within the entire range of habitats and stream segments selected in the Coastal CA Recovery Units, are not believed to be essential and/or provide the greatest stability for populations of the southwestern willow flycatcher. As noted in the ''Public Comments Solicited'' section above, we are seeking comments on whether we should consider these or other areas for inclusion in a final designation of critical habitat.

Lateral Extent

In order to determine the lateral extent of critical habitat for the flycatcher, we considered the variety of purposes riparian habitat serves the southwestern willow flycatcher, the dynamic nature of rivers and riparian habitat, the relationship between the location of rivers, flooding, and riparian habitat, and the expected boundaries, over time, of these habitats.

Southwestern willow flycatchers use riparian habitat in a variety of conditions for breeding, feeding, sheltering, cover, dispersal, and migration stopover areas. Riparian habitat is dependent on the location of river channels, floodplain soils, subsurface water, floodplain shape, and is driven by the wide variety of high, medium, and low flow events. Rivers can and do move from one side of the floodplain to the other. Flooding occurs at periodic frequencies that recharge aquifers and deposit and moisten fine floodplain soils that create seedbeds for riparian vegetation germination and growth within these boundaries.

Over time, flycatcher habitat is expected to change its location as a result of shifting river channels, flooding, drought, springs, seeps, and other factors such as agricultural run-off, diversions, and modifications of riverbeds. The methodology that we used to map the river channel and associated alluvial areas within the riparian zone is intended to provide the locations where dynamic river functions exist that create and maintain southwestern willow flycatcher habitat for nesting, feeding, sheltering, cover,

dispersal, and migration. In those areas where lakebeds were included in the proposed designation, we identified the lakebed using the high water mark.

In this proposal, we consider the riparian zone to be the area surrounding the select river segment, which is directly influenced by river functions. The boundaries of the lateral extent or riparian zone (i.e., the surrogate for the delineation of the lateral boundaries of proposed critical habitat) were derived by one of two methods. The area was either captured from existing digital data sources (listed below) or created through expert visual interpretation of remotely sensed data (aerial photographs and satellite imagery ''also listed below). Geographic Information System (GIS) technology was utilized throughout the lateral extent determination. ESRI, Inc. ArcInfo 8.3 was used to perform all mapping functions and image interpretation.

Pre-existing data sources used to assist in the process of delineating the lateral extent of the riparian zones for this proposal included: (1) National Wetlands Inventory (NWI) digital data from the mid 1980's, 2001, 2002; (2) Federal Emergency Management Agency (FEMA) 1995, Q3 100 year flood data; (3) U.S. Census Bureau Topologically Integrated Geographic Encoding and Referencing; and (4) (TIGER) 2000 digital data.

Where pre-exiting data may not have been available to readily define riparian zones, visual interpretation of remotely sensed data was used to define the lateral extent. Data sources used in this included: (1) Terraserver online Digital Orthophoto Quarter Quads (DOQQs), black & white, 1990's era and 2001 (3) U.S. Geological Survey (USGS) DOQQs 1997: (3) USGS aerial photographs, 1 meter, color-balanced, and true color, 2002; (4) Landsat 5 and Landsat 7 Thematic Mapper, bands 4, 2, 3, 1990–2000 (5) Emerge Corp, 1meter, true color imagery, 2001; (6) Local Agency Partnership, 2 foot, true color, 2000; and (7) National Wetlands Inventory aerial photographs, 2001–2002.

We refined all lateral extents for this proposed designation by creating electronic maps of the lateral extent and attributing them according to the following riparian sub-classifications. Riparian developed areas, as defined below, are not included in our proposed critical habitat designation since these areas do not contain the primary constituent elements (see ''Primary Constituent Elements'' section above) and, therefore, do not meet the definition of critical habitat.

(1) Riparian Vegetated: This class is used to describe areas still in a natural state, (i.e., riparian forest, vegetated and unvegetated wetlands, water bodies, any undeveloped or unmanaged lands within the approximate riparian zone).

(2) Riparian Developed: This class is used to describe all developed areas (i.e., urban/suburban development, agriculture, utilities, mining/extraction).

Special Management Considerations or Protection

As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those physical and biological features essential to the conservation of the species for inclusion in the designation pursuant to section 3(5)(A) of the Act. We then evaluate lands defined by those features to assess whether they may require special management considerations or protection. As discussed throughout this proposed rule, the southwestern willow flycatcher and its habitat are threatened by a multitude of threats such as loss and modification of habitat due to industrial, agricultural, and urban developments. A more detailed discussion of threats to the southwestern willow flycatcher and its habitat can be found in the final listing rule (60 FR 10694, February 27, 1995), the previous critical habitat designation (62 FR 39129, July 22, 1997), and the final recovery plan (August 2002).

The areas proposed for designation as critical habitat will require some level of management and/or protection to address the current and future threats to southwestern willow flycatchers and maintain the primary constituent elements essential to its conservation in order to ensure the overall conservation of the species. The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the flycatcher. Federal activities that may affect those unprotected areas (such as groundwater pumping, developments, watershed condition, etc.) outside of critical habitat are still subject to review under section 7 of the Act if they may affect the flycatcher. The prohibitions of section 9 (e.g., harm, harass, capture) also continue to apply both inside and outside of designated critical habitat.

Proposed Critical Habitat Designation

We are proposing stream segments in 21 Management Units found in 5 Recovery Units as critical habitat for the southwestern willow flycatcher. These stream segments occur in southern CA, southern NV, southwestern UT, AZ, NM, and south-central CO. The critical habitat areas described below constitute our best assessment at this time of the areas essential for the conservation of the southwestern willow flycatcher. In order to help further understand the location of these proposed stream segments, as well as those areas being excluded from this proposed designation, please see the associated maps found within this proposed rule or examine them at http://arizonaes.fws.gov. The 5 Recovery Units and associated stream segments are:

Coastal California Recovery Unit

(1) Santa Ynez Management Unit—Santa Ynez River.

(2) Santa Ana Management Unit—Bear Creek, Mill Creek, Oak Glen Creek/Yucaipa Creek/Wilson Creek/San Timoteo Wash, Santa Ana River, and Waterman Canyon.

(3) San Diego Management Unit—Las Flores Creek/Las Pulgas Creek, San Mateo Creek, Christianitos Creek, and San Onofre Creek; Santa Margarita River and DeLuz Creek; San Luis Rey River and Pilgrim Creek; Agua Hedionda Creek and Agua Hedionda Lagoon; San Dieguito River, Lake Hodges, San Ysabel River and Temescal Creek; Temecula Creek; Cuyamaca Reservoir; and San Diego River.

Basin and Mohave Recovery Unit in California

(4) Owens Management Unit—Owens River.

(5) Kern Management Unit—South Fork Kern River (including upper Lake Isabella).

(6) Mohave Management Unit—Deep Creek, Holcomb Creek, Mohave River.

(7) Salton Management Unit—San Filipe Creek.

Lower Colorado Recovery Unit—Nevada, California/Arizona border, Arizona, Utah

(8) Little Colorado Management Unit—Little Colorado River, West/East/and South Forks of the Little Colorado River, AZ.

(9) Virgin Management Unit—Virgin River, NV/AZ/UT.

(10) Middle Colorado Management Unit—Colorado River, AZ.

(11) Pahranagat Management Unit—Pahranagat River, Muddy River, NV.

(12) Bill Williams Management Unit—Big Sandy River, Bill Williams River, Santa Maria River (including upper Alamo Lake), AZ.

(13) Hoover to Parker Management Unit—Colorado River, CA/AZ.

(14) Parker to Southerly International Border Management Unit—Colorado River, CA/AZ.

Gila Recovery Unit in Arizona and New Mexico

(15) Verde Management Unit—Verde River (including Horseshoe Lake), AZ.

(16) Roosevelt Management Unit—Salt River and Tonto Creek (including Roosevelt Lake), and Pinto Creek, AZ.

(17) Middle Gila/San Pedro Management Unit—Gila River, San Pedro River, AZ.

(18) Upper Gila Management Unit—San Carlos River in AZ and Gila River in AZ/NM.

Rio Grande Recovery Unit in New Mexico and Colorado

(19) San Luis Valley Management Unit—Conejos River, Rio Grande, CO.

(20) Upper Rio Grande Management Unit—Coyote Creek, Rio Grande, Upper Rio Grande del Rancho, NM.

(21) Middle Rio Grande Management Unit—Rio Grande, NM.

Tables 1 through 3 show the lands being excluded from proposed critical habitat pursuant to section 4(b)(2) of the Act (Table 1), a summary of area determined to be essential to the southwestern willow, area excluded, and area proposed as critical habitat by State, and the approximate area proposed as critical habitat for the southwestern willow flycatcher by land ownership and State (Table 3).

Table 1. Approximate area ac (ha)/mi (km) excluded by activity from proposed critical habitat for the southwestern willow flycatcher pursuant to section 4(b)(2) of the Act.

	AZ	CA	CO, NM, NV, UT
Habitat Conservation Plans: (Western Riverside County Multiple Species Habitat Conservation Plan; San Diego Multiple Species Conservation Program; Draft City of Carlsbad Habitat Management Plan; Roosevelt Lake HCP).	19,525 (7,901)/24 (39).	6,893 (2792)/73 (116)	None.
Department of Defense Lands: (The Marine Corps Base, Camp Pendleton; Seal Beach Naval Weapons Station, Fallbrook Detachment).	None	4,020 (1626)/41 (69)	None.

Table 2. Approximate essential area, excluded area, and proposed critical habitat area for the southwestern willow flycatcher [ac (ha)/mi (km)].

	Essential area	Excluded area	Total proposed
AZ	138,140 (55,875)/496 (801)	19,525 (7,901)/24 (39)	157,665 (63,776)/520 (840)
AZ–CA*	/134 (214)	/0 (0)	/134 (214)
CA	60,359 (24,406)/340 (550)	10,913 (4,418)/114 (185)	71,272 (28,824)/454 (735)
CO	68,430 (27,694)/116 (185)	0 (0)/0 (0)	68,430 (27,694)/116 (185)
NM	63,804 (25,791)/257 (414)	0 (0)/0 (0)	63,804 (25,791)/257 (414)
NV	11,948 (4,834)/46 (74)	0 (0)/0 (0)	11,948 (4,834)/46 (74)
UT	2,976 (1,205)/28 (44)	0 (0)/0 (0)	2,976 (1,205)/28 (44)
Total	345,657 (139,805)/ 1,417 (2,282)	30,438 (12,319)/138 (224)	376,095 (152,124)/ 1,555 (2,506)

* Due to the fact that the Lower Colorado River acts as the border between the States of AZ and CO we have created a separate table entry in order to avoid a duplication of stream mi/km in this area. Additionally, we were not able to provide approximate figures for the size of this area, only for the stream length.

Table 3. Critical habitat proposed for the southwestern willow flycatcher by land ownership and State in ac (ha).

	Federal	State	Private	Other
AZ	96,615 (39,082)	10,640 (4,304)	50,410 (20,390)	0 (0)
CA	17,876 (7,224)	11,759 (4,757)	0 (0)	41,637 (16,843)
CO	7,969 (3,224)	1,425 (579)	59,036 (23,891)	0 (0)
NM	24,119 (9,751)	246 (99)	39,439 (15,941)	0 (0)
NV	5,680 (2,298)	160 (66)	4,090 (1,653)	2,018 (817)
UT	482 (196)	25 (10)	2,469 (999)	0 (0)
Totals	15,2741 (61,775)	24,255 (9,815)	155,444 (62,874)	43,655 (17,660)

We provide here general descriptions of the essential nature of these areas that are consistent and shared by each stream segment. There are proposed critical habitat river segments in 21 of the 29 Management Units and 5 of the 6 Recovery Units defined in the recovery plan for the southwestern willow flycatcher (USFWS 2002: 84 to 85). Placed in the context of the subspecies' wide geographic distribution, the disjunct nature of the populations, the dynamic aspects of its habitat, its endangered status, and its recovery goals, each segment is essential for the conservation of the southwestern willow flycatcher (USFWS 2002). Segments are distributed throughout a

large portion of the subspecies' range in order to help avoid catastrophic losses and to provide metapopulation stability, gene flow, and connectivity. Each segment is essential because it contains one or more of the primary constituent elements, and as a result, provides flycatcher habitat for breeding, feeding, sheltering, and migration that subsequently provide metapopulation stability, gene flow of the subspecies, and connectivity between neighboring Management Units and Recovery Units (USFWS 2002: 74 to 75 and 86 to 92). Each segment contributes habitat in order to help provide for the numerical and habitat-related goals identified in the Recovery Plan (USFWS 2002: 77 to 92). Each segment was identified in the Recovery Plan as an area that sustains flycatcher habitat (USFWS 2002: D–12 to 15). The distribution and abundance of territories and habitat within each segment are expected to shift over time as a result of natural disturbance events such as flooding that reshape floodplains, river channels, and riparian habitat (USFWS 2002: 18, D–11 to 13, D–15).

In the development of the proposal of critical habitat for the southwestern willow flycatcher, we determined which lands are essential to the conservation of the species by defining the physical and biological features essential to the species' conservation and delineating the specific areas defined by them. We then evaluated those lands determined to be essential to ascertain if any specific areas are appropriate for exclusion from critical habitat pursuant to section 4(b)(2) of the Act. On the basis of our evaluation, we have determined that the benefits of excluding certain approved and pending HCPs and lands owned and managed by the Department of Defense from critical habitat for the southwestern willow flycatcher outweighs the benefits of their inclusion, and have subsequently excluded those lands from this proposed designation of critical habitat for this subspecies pursuant to section 4(b)(2) of the Act (refer to ''Exclusions under Section 4(b)(2) of the Act'' section below). The resulting proposal includes a subset of lands essential to the conservation of the southwestern willow flycatcher. A description of all areas determined essential to the conservation of the southwestern willow flycatcher follows.

Coastal California Recovery Unit

This unit stretches along the coast of southern CA from just north of Point Conception south to the Mexico border. In 2002, there were a total of 167 known flycatcher territories in this Recovery Unit (14 percent of the rangewide total) (Sogge *et al.* 2003). A total of 130 territories (based on 2002 results) have been determined to be essential and considered in this proposal. In 2001, territories were distributed along 15 relatively small watersheds, mostly in the southern third of the Recovery Unit (USFWS 2002: 64). In 2001, most breeding sites were small (less than five territories); the largest populations are along the San Luis Rey, Santa Margarita, and Santa Ynez Rivers (USFWS 2002: 64). In 2001, all territories occurred in native or native-dominated habitats; over 60 percent are on government-managed lands (Federal, State, and/or local) (USFWS 2002: 64). This Recovery Unit contains the Santa Ynez, Santa Ana, and San Diego Management units. The stream segments proposed as critical habitat are described below in their appropriate Management Units.

Santa Ynez Management Unit

We are proposing a 39 km (24 mi) Santa Ynez River segment in Santa Barbara County, CA. This is the only stream in the Santa Ynez Management Unit to have nesting southwestern willow flycatchers and is northernmost along coastal CA. While a total of three sites are known along the length of the Santa Ynez River, our selected stream segment holds two breeding sites. A high of 28 territories were detected on our selected segment in 2000. In 2002, four territories were known at one of two sites along our selected river segment. Southwestern willow flycatchers have been detected nesting on the Santa Ynez River since 1991.

Santa Ana Management Unit

The Santa Ana River is the single largest river system in southern CA with flycatchers distributed throughout the stream from its headwaters and tributaries in the San Bernardino Mountains in San Bernardino County, CA. We are proposing a 84 km (52 mi) segment of the Santa Ana River in San Bernardino and Riverside Counties and other segments with high connectivity near its headwaters. In San Bernardino County we are proposing 15 km (9 mi) of Bear Creek, 30 km (19 mi) of Mill Creek, 4 km (3 mi) of Waterman Creek, 5 km (3 mi) of Wilson Creek, and 12 km (8 mi) of Oak Glen Creek. Streams that we are proposing that cross both San Bernardino and Riverside Counties are 13 km (8 mi) of San Timoteo Wash and 6 km (4 mi) of Yucaipa Creek. Seven breeding sites along the Santa Ana River segment had 15 territories in 2002. In 2002, there was one breeding site on Bear Creek (three territories), three sites on Mill Creek (seven territories), one site on Waterman Creek (no territories in 2002, but a single territory from 1999 to 2000), one site on Oak Glen Creek (three territories), one site on San Timoteo Creek (two territories), and no sites on Yucaipa or Wilson Creek (Yucaipa and Wilson Creeks connect San Timoteo and Oak Glen Creeks). In 2002, these locations together totaled 30 territories.

As discussed throughout this rule, portions of the Santa Ana Watershed, including the Santa Ana River, Yucaipa Creek, and Temecula Creek containing essential habitat for the southwestern willow flycatcher that lie within the boundaries of the Western Riverside MSHCP are being excluded from proposed critical habitat pursuant to section 4(b)(2) of the Act.

San Diego Management Unit

The longest two stream segments we are proposing (San Luis Rey and Santa Margarita Rivers) also contain the largest numbers of flycatcher territories in the San Diego Management Unit. In addition to these two streams, we are proposing a collection of smaller streams within the Unit that have fewer numbers of territories, but are in high connectivity with each other, and portions of unoccupied stream segments to provide population stability, growth, and connectivity for these populations. In 2002, a total of 94 territories were detected along the segments proposed for critical habitat.

We are proposing an 8 km (6 mi) segment of San Mateo Creek, a 7 km (3 mi) of Christianitos Creek, a 6 km (4 mi) segment of San Onofre Creek, and an 8 km (5 mi) segment of Las Flores Creek along with a short connecting 3 km (2 mi) segment of Las Pulgas Creek in northern San Diego County, CA. Two territories were detected at Las Flores/Las Pulgas Creek in 1995, and two territories were detected at San Mateo Creek in 1997. No territories have been detected on San Onofre or Christianitos Creeks. While no territories are known from these segments they are determined to be essential to the conservation of the southwestern willow flycatcher because these segments fall within a 29 km/18 mi radius of a large southwestern willow flycatcher population (as explained in the ''Criteria for Defining Essential Habitat'' section above).

We are proposing a 42 km (24 mi) segment of the Santa Margarita River and 10 km (6 mi) segment of DeLuz Creek in San Diego County, CA, at Camp Pendleton. Territories have been detected on the Santa Magarita River at Camp Pendleton since 1994. A high of 22 territories in 2002 were detected at

the two known breeding sites on the Santa Margarita River. No territories are known from DeLuz Creek. While no territories are known from this segment it is determined to be essential to the conservation of the southwestern willow flycatcher because these segments fall within a 29 km/18 mi radius of a large southwestern willow flycatcher population (as explained in the ''Criteria for Defining Essential Habitat'' section above).

We are proposing an 81 km (50 mile) segment of the San Luis Rey River and the lowest 10 km (6 mi) segment of Pilgrim Creek in San Diego County, CA. Territories have been detected since 1994. A total of seven breeding sites exist on the San Luis Rey River throughout the selected segment. A high of 60 territories were detected at 6 of the 7 breeding sites in 2002 (a single location on the upper San Luis Rey River held 50 territories). A single breeding site exists on Pilgrim Creek where 1 to 2 territories were detected in 1994, 1995, and 1999.

We are proposing a small 13 km (9 mi) isolated portion of the Agua Hedionada Creek/Lagoon in San Diego County, CA. A single territory was detected from 1998 to 2000. No territories were detected in 2001 or 2002.

We are proposing joining segments of Santa Ysabel River (25 km/14 mi), and San Dieguito River (31 km/19 mi), which also includes a connecting 11 km (7 mi) section of Lake Hodges and a 15 km (9 mi) segment of Temescal Creek in San Diego County, CA. Three breeding sites are known along this connected stretch of stream (two on Santa Ysabel Creek and a single site on the San Dieguito River) with a total of four territories in 2002 and a high of five detected in 1997. Territories have been detected since 1996. No territories are known from Lake Hodges or Temescal Creek. While no territories are known from these segments they are determined to be essential to the conservation of the southwestern willow flycatcher because these segments fall within a 29 km/18 mi radius of a large southwestern willow flycatcher population (as explained in the ''Criteria for Defining Essential Habitat'' section above).

We are proposing a 30 km (18 mi) segment of Temecula Creek in San Diego and Riverside Counties, CA. Two breeding sites are known within this segment. A total of four territories were detected in 2002. Territories were first detected in 1997.

We are proposing two distinct segments of the Sweetwater River, and a single segment of the San Diego River in San Diego County, CA. A 4 km (2 mi) segment of the upper Sweetwater River at Cuyamaca Reservoir has had two flycatcher territories each time it has been surveyed in 1997, 1998, and 2002. We are also proposing a 26 km (17 mi) segment of the San Diego River where no territories have been detected. While no territories are known from these segments they are determined to be essential to the conservation of the southwestern willow flycatcher because these segments fall within a 29 km/18 mi radius of a large southwestern willow flycatcher population (as explained in the ''Criteria for Defining Essential Habitat'' section above).

As discussed throughout this rule, portions of lands noted above within the boundaries of the San Diego Multiple MSCP contain essential habitat for the southwestern willow flycatcher, including areas along portions of the San Dieguito and San Diego that are being excluded from proposed critical habitat pursuant to section 4(b)(2) of the Act.

Essential habitat for the southwestern willow flycatcher within the boundaries of the Marine Corps Base, Camp Pendleton occurs along portions of Christianitos (7 km/3 mi), San Mateo (8 km/6 mi), San Onofre (6 km/4 mi), Los Flores (8 km/5 mi) Las Pulgas (3 km/2 mi), and DeLuz Creeks (10 km/6 mi), and the Santa Margarita River (42 km/24 mi); however, these areas are being excluded from proposed critical habitat pursuant to section 4(b)(2) of the Act. Essential habitat for the southwestern willow flycatcher occurs on portions of the Santa Margarita River located within the boundaries of the Seal Beach Naval Weapons Station, Fallbrook Detachment; however, these areas are being excluded from proposed critical habitat pursuant to section 4(b)(2) of the Act.

Basin and Mohave Recovery Unit

This unit is comprised of a broad geographic area including the arid interior lands of southern CA and a small portion of extreme southwestern NV. In 2002, there were a total of 69 known flycatcher territories (7 percent of the rangewide total) distributed among five widely separated drainages (Sogge *et al.* 2003); 66 of those territories are found in this proposal. Almost all sites have less than five territories; the largest populations occur in the Kern and Owens River drainages (USFWS 2002: 64). As of 2002, all territories were in native or native-dominated riparian habitats, and approximately 70 percent are on privately owned lands (USFWS 2002: 64). The Recovery Unit contains the Owens, Kern, Mohave, Salton, and Amargosa Management units. The stream segments proposed as critical habitat are described below in their appropriate Management Units.

Owens Management Unit

We are proposing a 110 km (69 mi) Owens River segment in Inyo and Mono Counties, CA. This is the only stream in the Owens Management Unit known to have nesting southwestern willow flycatchers and most northernmost in the Basin and Mohave Recovery Unit and in California. Southwestern willow flycatchers have been detected nesting at five sites along this reach of the Owens River since 1999. In 2002, a high of 28 territories at all 5 sites were detected within this stream segment.

Kern Management Unit

We are proposing a 20 km (13 mi) segment of the South Fork of the Kern River in Kern County, CA, including the upper portion of Lake Isabella. This is the only stream segment in the Kern Management Unit known to have nesting southwestern willow flycatchers. Southwestern willow flycatchers have been detected nesting at two sites along this reach of the Kern River since 1993. In 1997, a high of 37 territories were detected at a single location. In 2002, 23 territories at both sites were detected within this stream segment.

Mohave Management Unit

We are proposing a 17 km (10 mi) portion of the Mojave River (including Mohave River Forks Reservoir), 20 km (12 mile) section of Holcomb Creek, and 21 km (12 mile) section of Deep Creek in San Bernardino County, CA, near the Town of Victorville. These stream segments, within the Mohave Management Unit, are known to have nesting southwestern willow flycatchers. Southwestern willow flycatchers have been detected nesting at three sites along this reach of the Mojave River, one site on Holcomb Creek, and no sites on Deep Creek since 1995. Deep Creek connects Holcomb Creek with the Mohave Forks Reservoir. In 2002, a high of 13 territories were detected at all 5 sites within these segments.

Salton Management Unit

We are proposing an 11 km (7 mi) portion of San Filipe Creek in San Bernardino County, CA. This is the only stream in the Salton Management Unit known to have nesting southwestern willow flycatchers. Southwestern willow flycatchers have been detected nesting at a single site since 1998. In 1998 and 1999, a high of four territories

were detected on this stream segment. In 2002, two territories were detected at this site. This stream and the territories on it have high connectivity with other smaller populations in the adjacent San Luis Rey Management Unit in the Coastal CA Recovery Unit raising the collective population above 10 territories.

Lower Colorado Recovery Unit

This is a geographically large and ecologically diverse Recovery Unit, encompassing the Colorado River and its major tributaries from the high elevation streams in White Mountains of East/Central Arizona to the main stem Colorado River through the Grand Canyon downstream through the arid lands along the lower Colorado River downstream to the Mexico border (USFWS 2002: 64). In 2002, despite its size, the Unit had only 127 known flycatcher territories (11 percent of the rangewide total), most of which occur away from the main-stem Colorado River (Sogge *et al.* 2003). One-hundred eighteen territories recorded from the most recent data in 2002 and 2003 are within the proposed river segments. In 2001, most sites included less than 5 territories; the largest populations (most of which are less than 10 territories) are found on the Bill Williams, Virgin, and Pahranagat River drainages (USFWS 2002: 64). Approximately 69 percent of territories are found on government-managed lands, and 8 percent are on Tribal lands (USFWS 2002: 64). Habitat characteristics range from purely native (including high-elevation and low-elevation willow) to exotic (primarily tamarisk) dominated stands (USFWS 2002: 64). This Recovery Unit contains the Little Colorado, Middle Colorado, Virgin, Pahranagat, Bill Williams, Hoover to Parker, and Parker to Southerly International Border Management units.

Little Colorado Management Unit

We are proposing a segment of the Little Colorado River and portions of the East, West, and South Forks of the Little Colorado River. The 17 km (10 mi) segment of the Little Colorado River segment occurs in Apache County, near the Town of Greer. The 7 km (4 mi) segment of the South Fork of the Little Colorado River extends from Joe Baca Draw downstream to its confluence with the Little Colorado River. The 11 km (8 mi) segment of the East Fork of the Little Colorado River extends from Forest Service Road 113 to its confluence with the West Fork of the Little Colorado River. The 7 km (5 mi) section of the West Fork of the Little Colorado goes from Forest Service Road 113 downstream to the Diversion Ditch. Each segment is in Apache County, AZ. Southwestern willow flycatchers have been detected nesting at single sites on both the Little Colorado and West Fork of the Little Colorado since 1993. In 1996, a high of 11 territories were detected at both locations on the West Fork and Little Colorado Rivers. In 2003, two territories were detected on these segments. No territories have been detected on the South or East Forks of the Little Colorado River. While no territories are known from these segments they are determined to be essential to the conservation of the southwestern willow flycatcher because these segments fall within a 29 km/18 mi radius of a large southwestern willow flycatcher population (as explained in the ''Criteria for Defining Essential Habitat'' section above).

Middle Colorado Management Unit

We determined that the 57 km (35 mi) Colorado River segment in Mohave County, AZ, above Lake Mead including a 2 km (1 mi) portion of Lake Mead is essential to the conservation of the southwestern willow flycatcher. This segment extends from Colorado River Mile 243 downstream to River Mile 280 at Pierce Ferry, including a small portion of upper Lake Mead. Southwestern willow flycatchers have been detected nesting at 14 sites along this reach of the Colorado River since 1993. In 1998, a high of 15 territories at 8 breeding sites were detected within this segment. In 2003, no territories were detected on this stream segment.

Virgin Management Unit

We are proposing a contiguous segment of the Virgin River in UT, AZ, and NV, plus a single detached segment of the Virgin River in UT. The larger segment extends for 147 km (92 mi) from the Washington Field Diversion Impoundment in Washington County, UT, downstream through the Town of Littlefield, AZ, and into Nevada to Colorado River mile 280 at the upper end of Lake Mead in Clark County, NV. This larger segment exists for 44 km (28 mi) in UT, approximately 56 km (35 mi) through AZ, and 47 km (29 mi) in NV. The Virgin River is the only stream within this Management Unit known to have nesting southwestern willow flycatchers. Southwestern willow flycatchers have been detected nesting in 1995 at three sites in NV segment, a single site in AZ since 2001, and two sites in UT since 1995. In 2001, a high of 40 territories were detected at 5 of the 6 sites within the proposed designation (36 in NV, 1 in AZ, and 3 in UT). In 2002, 20 territories total were detected at 4 of the 6 sites.

Pahranagat Management Unit

We are proposing two segments along the Pahranagat River in Lincoln County, NV, which include the Pahranagat National Wildlife Area and the Key Pittman Wildlife Area, and a segment of the Muddy River in Clark County, NV, on the Overton Wildlife Area. The two segments of the Pahranagat River are 6 km (3 mi) and 18 km (12 mi) long, while the Muddy River segment is 3 km (2 mi) long. The boundaries for each segment are the Pahranagat National Wildlife Refuge, the Key Pittman State Wildlife Area, and the Overton State Wildlife Area. Southwestern willow flycatchers have been detected nesting since 1997 at a single location on each Pahranagat River segment and the Muddy River segment. The Muddy River segment is in high connectivity to the Virgin River segment in the Virgin Management Unit. In 2001, a high of 28 territories were detected at the three breeding sites on the proposed segments; 19 territories were detected at the same three sites in 2002.

Bill Williams Management Unit

We are proposing a lower Bill Williams River segment, a segment on upper Alamo Lake (includes the Big Sandy, Santa Maria, Bill Williams River confluence), and a section of the Big Sandy River through the Town of Wikieup (including a small segment of Trout Creek). We are proposing the lowest 21 km (13 mi) of the Bill Williams River from the upper end of Planet Ranch downstream through the Bill Williams National Wildlife Refuge to the confluence with Lake Havasu at the Colorado River in Mohave/La Paz County, AZ. We are proposing a 22 km (15 mi) segment of the Bill Williams, Santa Maria and Big Sandy Rivers at their confluence at upper Alamo Lake in La Paz County, AZ. We are proposing a 61 km (38 mi) segment of the Big Sandy River from Cove Sor Wash confluence downstream through the Town of Wikieup to Groom Peak Wash. Southwestern willow flycatchers have been detected nesting on the lower Bill Williams and Big Sandy Rivers since 1994, and on upper Alamo Lake since 1996. In 2003, a high of 53 territories were detected at 6 sites with 32 being within the high water mark of Alamo Lake.

Hoover to Parker Management Unit

We are proposing a 107 km (67 mi) segment along the Colorado River from Davis Dam to Parker Dam, including Lake Havasu and Topock Marsh of The

Havasu National Wildlife Refuge in Mohave and La Paz County, AZ, and San Bernardino County, CA. A total of six breeding sites have been detected along this stretch of river since 1995. The largest and most consistent breeding site is at Topock Marsh, where since 1997, 12 to 20 territories have been detected. The 21 territories detected in this Management Unit in 2002 (20 at Topock Marsh) is the greatest number of territories detected during a single year. The other five breeding sites have mostly held one to three territories in the late 1990s. In 2003, 244 migrant willow flycatchers were detected between Davis Dam and the Southerly International Border (Koronkiewicz *et al.* 2003). These lower Colorado River segments are the most heavily used known locations for migrating southwestern willow flycatchers.

Parker to Southerly International Border

We are proposing two segments along the Colorado River. One segment is approximately 27 km (17 mi) in La Paz and San Bernardino Counties, California, and the second segment is approximately 80 km (50 mi) in La Paz and Yuma, Counties, Arizona, and Imperial California. A total of 13 breeding sites have been detected along this stretch of river since 1995. In 2003, 244 migrant willow flycatchers were detected between Davis Dam and the Southerly International Border (Koronkiewicz *et al.* 2003), and as of May 28, 2004, approximately 240 migrant willow flycatchers were detected, mostly in this portion of the Colorado River (L. Dickerson, SWCA Inc., e-mail). While migrant willow flycatchers have been detected on many streams (USFWS 2002: 19 and ES 2 to 3), and migrations habitat is an essential component of each proposed segment, the lower Colorado River segment is one of the most heavily known used migratory corridors, and a result, this segment has additional value. A high of 13 territories at 10 sites were detected in 1996. In 2002, a total of three territories at two sites were detected, and in 2003, two territories at two sites were found.

Gila Recovery Unit

This unit includes the Gila River watershed, from its headwaters in southwestern NM downstream to near the confluence with the Colorado River (USFWS 2002: 65). In 2002, the 588 known flycatcher territories (51 percent of the rangewide total) were distributed primarily on the Gila and lower San Pedro Rivers (Sogge *et al.* 2003). A total of 505 territories were detected in 2003 within the segments proposed in this Management Unit. Many sites are small (less than 5 territories), but sections of the upper Gila River, and lower San Pedro River (including its confluence with the Gila River), and the Tonto Creek and Salt River inflows within the high water mark of Roosevelt Lake support the largest sites known within the subspecies' range. In 2001, private lands hosted 50 percent of the territories, including one of the largest known flycatcher populations, in the Cliff-Gila Valley, NM (USFWS 2002: 65). Approximately 50 percent of the territories are on government-managed lands (USFWS 2002: 65). Although in 2001, 58 percent of territories were in native-dominated habitats, flycatchers in this Recovery Unit make extensive use of exotic (77 territories) or exotic-dominated (108 territories) habitats (primarily tamarisk). This Recovery Unit contains the Verde, Hassayampa/Agua Fria, Roosevelt, San Francisco, Upper Gila, Middle Gila/San Pedro, and Santa Cruz Management units.

Verde Management Unit

We are proposing three different segments of the Verde River totaling 129 km (80 mi). The upper 58 km (36 mi) Verde River segment occurs throughout the Verde Valley in Yavapai County, AZ. The 63 km (39 mi) middle Verde River segment begins at the East Verde/Verde River confluence in Yavapai County on the Tonto National Forest and extends downstream to the USGS gauging station located 7 km (4.5 mi) below Horseshoe Dam in Maricopa County. The lower 8 km (5 mi) segment of the Verde River is located in Maricopa County, Arizona. Southwestern willow flycatchers have been detected at six breeding sites on the upper two segments since 1993. In 2003, a high of 13 territories were detected at 2 sites within the Middle Verde River section (11 were found at Horseshoe Reservoir). In 1997, 10 territories were the highest recorded on the upper Verde River segment. While no territories are known from these segments they are determined to be essential to the conservation of the southwestern willow flycatcher because these segments fall within a 29 km/18 mi radius of a large southwestern willow flycatcher population (as explained in the ''Criteria for Defining Essential Habitat'' section above).

Roosevelt Management Unit

We are proposing a contiguous segment of lower Tonto Creek, Roosevelt Lake, and the Salt River, and a segment of Pinto Creek in Gila and Pinal Counties, AZ. A 34 km (21 mi) segment of Tonto Creek begins at the confluence of Tonto Creek and Rye Creek and extends to the high water mark of Roosevelt Lake in Gila County, AZ. The 33 km (20 mi) segment of the Salt River extends from the Cherry Creek confluence on the Tonto National Forest and travels downstream to the high water mark of Roosevelt Lake in Gila County AZ. Joining the Tonto Creek and Salt River segments is the 39 km (24 mi) lakebed at Roosevelt Lake (comprised of the Tonto Creek and Salt River confluence) in Gila County, AZ. Additionally, we are proposing a segment of Pinto Creek that extends for 34 km (21 mi) from its confluence with Haunted Canyon downstream to Roosevelt Lake in Gila and Pinal Counties, AZ. Flycatchers have been detected nesting at Roosevelt Lake, along the Tonto Creek and Salt River inflows since 1993. In 2002, a high of 146 territories from 5 sites were detected on the stream segments proposed within this Management Unit. In 2003, 133 territories from 6 sites were detected in this Management Unit; all but 1 territory was in the habitat between the lake and high water mark of Roosevelt Lake. The number of territories found at Roosevelt Lake represents one of the highest concentrations of southwestern willow flycatchers known and over 10 percent of the entire subspecies. Flycatcher habitat is expected to follow the lake's edge as water recedes or increases. No territories have been detected yet on Pinto Creek. While no territories are known from this segment it is determined to be essential to the conservation of the southwestern willow flycatcher because these segments fall within a 29 km/18 mi radius of a large southwestern willow flycatcher population (as explained in the ''Criteria for Defining Essential Habitat'' section above).

Incidental take expected to result from the operation of Roosevelt Dam is covered under a 10(a)(1)(B) permit and an operative HCP. Dam operations are expected to inundate habitat periodically, but over time, operations are expected to allow varying amounts of flycatcher habitat to persist (USFWS 2003). ERO (2002) estimated that an average of 121 to 162 ha (300 to 400 ac) of suitable habitat (thus about 61 to 81 ha/150 to 200 ac of occupied habitat) would be present during full operation of the dam over the next 50 years. These 61 to 81 ha (150 to 200 ac) would support 45 to 90 southwestern willow flycatcher territories (USFWS 2003). Although short-term impacts from inundation could be severe, the

Flycatcher Recovery Team believed that such events were compatible with recovery, and the target number of territories and acres of suitable habitat recommended for reclassification could still be achieved in most years despite continued full operation of Roosevelt Dam (USFWS 2003). This is the only Management Unit where recovery goals were established smaller than existing numbers due to expected increase in lake elevation. As discussed in the ''Relationship of Critical Habitat to Approved Habitat Conservation Plans (HCPs)'' section of this rule, we are proposing to exclude Roosevelt Lake from the final designation of critical habitat.

Middle Gila/San Pedro Management Unit

We are proposing a segment of the middle and lower San Pedro River, and a segment of the Gila River near the San Pedro/Gila River confluence in Pinal, Pima, and Cochise Counties, AZ. The middle/lower San Pedro River segment extends for 110 km (68 mi) to the Gila River. The Gila River segment begins at Dripping Springs Wash and extends for 80 km (50 mi) downstream past the San Pedro/Gila confluence and Towns of Winkleman and Kelvin to Ashehurst Hayden Diversion Dam near the Town of Cochran in Gila and Pinal Counties, AZ. Flycatchers have been detected nesting along these segments since 1993. In 2003, a high of 167 territories from 19 sites (12 on San Pedro and 7 on the Gila) were detected on the stream segments we are proposing within this Management Unit. Degradation of habitat quality has dropped the number of territories on the Gila River segment from 68 in 1999 to 26 in 2003. This collection of territories along these two streams, along with territories found in the Roosevelt Management Unit (n=300), comprise about 25 percent of the entire subspecies.

Upper Gila Management Unit

We are proposing three segments of the upper Gila River in NM and AZ. The upper 119 km (74 mi) segment of the Gila River extends from Turkey Creek on the Gila National Forest downstream through the Cliff/Gila Valley and Hidalgo and Grant Counties, NM to the Town of Duncan in Greenlee County, AZ. The second segment extends from the upper end of Earven Flat in AZ above the Town of Safford and extends for 102 km (63 mi) through the Gila, Graham, and Pinal Counties, the Safford Valley, and into the San Carlos Apache Indian Reservation. We are also proposing a 6 km (3 mi) segment of the San Carlos Reservoir from approximately 1.3 mi west of the Pinal/Graham County line to Coolidge Dam.

Southwestern willow flycatchers have been detected nesting along these stream segments in the Upper Gila Management Unit since 1993. A total of 16 breeding sites (7 in NM, and 9 in AZ) are known in the Gila Management Unit. In 1999, a high of 262 territories at 8 sites were detected. A single site, the U-Bar ranch in the Cliff/Gila Valley, had 209 territories. In 2003, 191 territories at 8 sites were detected on the Gila River stream segments we are proposing within this Management Unit. The U-Bar ranch had 123 of these territories in 2003, but many are found outside of the flood-prone area, off-channel in habitat along irrigated ditches. The single site in the Cliff/Gila Valley, along with Roosevelt Lake, and the collection of territories in the Middle Gila/San Pedro Management Unit, comprise nearly 40 percent of the entire subspecies.

Rio Grande Recovery Unit

This unit encompasses the Rio Grande watershed from its headwaters in southwestern CO downstream to the Pecos River confluence in southwestern Texas, although no flycatcher breeding sites are currently known along the Rio Grande in Texas. Also included is the Pecos River watershed in NM and Texas (where no breeding sites are known) and one site on Coyote Creek, in the upper Canadian River watershed. In 2002, the majority of the 197 territories (17 percent of the rangewide total) were found along the Rio Grande itself (Sogge *et al.* 2003). From 2002 totals, 162 territories were found within the proposed river segments. In 2001, only three sites contained more than 5 territories (USFWS 2002: 65). Most sites are in native-dominated habitats; exotic-dominated sites include primarily tamarisk or Russian olive (USFWS 2002: 65). In 2001, of 56 nests that have been described in the middle and lower Rio Grande in NM, 43 (77 percent) used tamarisk as the nest substrate (USFWS 2002: 65). In 2001, government-managed lands accounted for 63 percent of the territories in this unit; Tribal lands supported an additional 23 percent (USFWS 2002). This Recovery Unit contains the San Luis Valley, Upper Rio Grande, Middle Rio Grande, and Lower Rio Grande Management Units.

San Luis Valley Management Unit

We are proposing a segment of the upper Rio Grande in Costilla, Conejos, Alamosa, and Rio Grande Counties, CO, and a segment of the Conejos River in Conejos, County, CO. The 139 km (87 mi) segment of the upper Rio Grande extends from the confluence with San Francisco Creek downstream through the Alamosa National Wildlife Refuge to the Lobatos Bridge. The 46 km (29 mi) segment of the Conejos River begins where State Highway 285 crosses the River and extends downstream to its confluence with the Rio Grande. Flycatchers have been detected nesting along these segments since 1997. In 2002, a high of 34 territories from 3 total sites (1 on Conejos River and 3 on the Rio Grande) were detected on the stream segments we are proposing within this Management Unit.

Upper Rio Grande Management Unit

We are proposing single segments of the upper Rio Grande in Taos, Rio Arriba, and Santa Fe Counties, NM, the Rio Grande del Rancho in Taos County, NM, and Coyote Creek in Mora County, NM. The upper Rio Grande segment extends for 75 km (46 mi) from the Taos Junction Bridge (State route 520) downstream to the Otowi Bridge (State Route 502). The 11 km (7 mi) of the Rio Grande del Rancho extends from Sarco Canyon downstream to the Arroyo Miranda confluence. The 10 km (6 mi) Coyote Creek segment travels from about 2 km/1 mi above Coyote Creek State Park downstream to the second bridge on State Route 518, upstream from Los Cocas. Flycatchers have been detected nesting along these segments since 1993. Eleven breeding sites are known to exist on these segments (seven on Rio Grande, one on Rio Grande del Rancho, and three on Coyote Creek). On the Rio Grande in 2002, 16 territories were detected at a single site. On the Rio Grande del Rancho in 2003, a high of six territories were detected at a single site. On Coyote Creek in 2000, a high of 17 territories at 3 sites were detected, however only 3 territories (from 2 sites) were detected in 2002, and no surveys occurred in 2003.

Middle Rio Grande Management Unit

We are proposing a 207km (129 mi) segment of the middle Rio Grande in Bernalillo, Valencia, and Soccoro Counties, NM, from 4.2 mi north of the intersection of Interstate Highways 25 and 40 downstream to the overhead powerline near Milligan Gulch at the northern end of Elephant Butte State Park. Southwestern willow flycatcher territories have been detected on these selected stream segments since 1993. On the Middle Rio Grande in 2003, a high of 107 territories at 6 of 7 different breeding sites were detected. In 2002, 98 territories at these same 7 sites were detected. A total of 85 territories were detected at the San Marcial site in 2003. Similar to the lower Colorado River

segments, the middle Rio Grande has been determined to be of additional significance due to its heavy use as a migratory corridor for the southwestern willow flycatcher (Yong and Finch 1997, 2002).

Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data available after taking into consideration the economic impact, impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. Consequently, we may exclude an area from critical habitat based on economic impacts, impacts on national security, or other relevant impacts such as preservation of conservation partnerships, if we determine the benefits of excluding an area from critical habitat outweigh the benefits of including the area in critical habitat, provided the action of excluding the area will not result in the extinction of the species.

In our critical habitat designation we use the provisions outlined in section 4(b)(2) of the Act to evaluate those specific areas essential to the conservation of the species to determine which areas to propose and subsequently finalize (*i.e.*, designate) as critical habitat. On the basis of our evaluation, we have determined that the benefits of excluding certain lands from the designation of critical habitat for the southwestern willow flycatcher outweighs the benefits of their inclusion, and have subsequently excluded those lands from this proposed designation pursuant to section 4(b)(2) of the Act as discussed below. We note that additional areas may also be considered for exclusion in the final rule and that any exclusions made in the final rule will be the result of a consideration of new information received, including consideration of all comments received and the findings of the economic and NEPA analyses.

Areas considered for exclusion pursuant to section 4(b)(2) may include, but are not limited to, those covered by: (1) Legally operative HCPs that cover the species and provide assurances that the conservation measures for the species will be implemented and effective; (2) draft HCPs that cover the species, have undergone public review and comment, and provide assurances that the conservation measures for the species will be implemented and effective (*i.e.*, pending HCPs); (3) Tribal conservation plans that cover the species and provide assurances that the conservation measures for the species will be implemented and effective; (4) State conservation plans that provide assurances that the conservation measures for the species will be implemented and effective; and (5) National Wildlife Refuge System Comprehensive Conservation Plans (CCPs) that provide assurances that the conservation measures for the species will be implemented and effective. The relationship of critical habitat to these types of areas is discussed in detail in the following paragraphs.

Within the essential habitat for southwestern willow flycatcher across six states there are Tribal lands, lands owned by DOD, National Wildlife Refuges, private lands with legally operative HCPs or draft HCPs, State lands with conservation plans, and other lands with management plans in place for the southwestern willow flycatcher.

Relationship of Critical Habitat to Approved Habitat Conservation Plans (HCPs)

As described above, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic and national security impacts, when designating critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. Development of an HCP is a prerequisite for the issuance of an incidental take permit pursuant to section 10(a)(1)(B) of the Act. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take.

HCPs vary in size and may provide for incidental take coverage and conservation management for one or many federally listed species. Additionally, more than one applicant may participate in the development and implementation of an HCP. The areas occupied by and determined to be essential to the southwestern willow flycatcher include approved HCPs that address multiple species, cover large areas, and have many participating permittees. Large regional HCPs expand upon the basic requirements set forth in section 10(a)(1)(B) of the Act because they reflect a voluntary, cooperative approach to large-scale habitat and species conservation planning. Many of the large regional HCPs in southern CA have been, or are being developed to provide for the conservation needs of numerous federally listed species and unlisted sensitive species and the habitat that provides for their biological needs. These HCPs address impacts in a planning area and create a preserve design within the planning area. Over time, areas in the planning area are developed according to the HCP and the area within the preserve is acquired, managed, and monitored. These HCPs are designed to implement conservation actions to address future projects that are anticipated to occur within the planning area of the HCP in order to reduce delays in the permitting process.

In the case of approved regional HCPs (*e.g.*, those sponsored by cities, counties, or other local jurisdictions) wherein the southwestern willow flycatcher is a covered species, a primary goal is to provide for the protection and management of habitat essential for the conservation of the species while directing development to non-essential areas. The regional HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the flycatcher. The process also enables us construct a habitat preserve system that provides for the biological needs and long-term conservation of the species.

Completed HCPs and their accompanying Implementing Agreements (IA) contain management measures and protections for identified preserve areas that protect, restore, and enhance the value of these lands as habitat for southwestern willow flycatchers. These measures include explicit standards to minimize any impacts to the covered species and its habitat. In general, HCPs are designed to ensure that the value of the conservation lands are maintained, expanded, and improved for the species that they cover.

For HCPs that have been already approved, we have provided assurances to permit holders that once the protection and management required under the plans are in place and for as long as the permit holders are fulfilling their obligations under the plans, no additional mitigation in the form of land or financial compensation will be required of the permit holders and, in some cases, specified third parties.

A discussion of completed HCPs or State of California's Natural Community Conservation Plan Act of 1992 (NCCP)/HCPs that we identified as having areas determined to be essential to the

conservation of the southwestern willow flycatcher follows.

Santa Ana Management Unit, CA

Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP)

The Western Riverside MSHCP was approved on June 22, 2004. Participants in this HCP include 14 cities, the County of Riverside, including the County Flood Control and Water Conservation District, County Waste Department; the California Department of Transportation, and the California Department of Parks and Recreation. The Western Riverside MSHCP is also a subregional plan under the State's NCCP and was developed in cooperation with CDFG. Within the 1.26 million-ac (510,000 ha) planning area of the MSHCP, approximately 153,000 ac (62,000 ha) of diverse habitats are identified for conservation. The conservation of 153,000 ac (62,000 ha) will complement other, existing natural and open space areas that are already conserved through other means (*e.g.*, State Parks, USFS, and County Park lands). An important objective of the MSHCP is to implement measures, including monitoring and management, necessary to conserve important habitat for the southwestern willow flycatcher that occurs within the plan's boundaries. The MSHCP aims to conserve 100 percent of occupied habitat for the southwestern willow flycatcher, including landscape areas 100 m (328 ft) adjacent to occupied areas. In addition, the MSHCP requires compliance with a Riparian/Riverine Areas and Vernal Pool policy that contains provisions requiring 100 percent avoidance and long-term management and protection of occupied areas not included in the conservation areas, unless a Biologically Equivalent or Superior Preservation Determination can demonstrate that a proposed alternative will provide equal or greater conservation benefits than avoidance. We completed an internal consultation on the effects of the plan on the southwestern willow flycatcher and its essential habitat that is found within the plan boundaries, and determined that implementation of the plan is provides for the conservation of the species.

On the basis of the conservation benefits afforded the flycatcher from the measure of the Western Riverside MSHCP and the provisions of section 4(b)(2) of the Act, portions of the Santa Ana Watershed, including the Santa Ana River, Yucaipa Creek, and Temecula Creek containing essential habitat for the southwestern willow flycatcher that lie within the boundaries of the Western Riverside MSHCP are excluded from proposed critical habitat. We have further determined that the exclusion of these areas from critical habitat would not result in the extinction of the flycatcher. The rationale for this determination is detailed below.

San Diego Management Unit

San Diego Multiple Species Conservation Program (MSCP)

In southwestern San Diego County, the MSCP effort encompasses more than 236,000 ha (582,000 ac) and involves the participation of the County of San Diego and 11 cities, including the City of San Diego. This regional HCP is also a regional subarea plan under the NCCP program and is being developed in cooperation with California Department of Fish and Game. The MSCP provides for the establishment of approximately 69,573 ha (171,000 ac) of preserve areas to provide conservation benefits for 85 federally listed and sensitive species over the life of the permit (50 years), including the southwestern willow flycatcher. We have determined that portions of lands within the boundaries of the San Diego Multiple MSCP contain essential habitat for the southwestern willow flycatcher, including areas along portions of the San Dieguito, San Diego, and Sweetwater Rivers. These particular areas lie within the boundaries of approved subarea plans.

On the basis of the conservation benefits afforded the flycatcher from the measures of the approved subarea plans of the MSCP and the provisions of section 4(b)(2) of the Act, we have excluded from proposed critical habitat those lands determined to be essential to the conservation of the flycatcher that are within the boundaries of the approved subareas of the MSCP. We have further determined that the exclusion of these areas from critical habitat would not result in the extinction of the flycatcher. The rationale for this determination is detailed below.

Following is our analysis of the benefits of including lands within approved HCPs versus excluding such lands from this critical habitat designation.

(1) Benefits of Inclusion

The benefits of including approved HCPs or NCCP/HCPs in critical habitat are normally small. The principal benefit of any designated critical habitat is that federally funded or authorized activities in such habitat that may affect it require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or non-existent. Currently approved and permitted HCPs and NCCP/HCPs are crafted to ensure the long-term survival and conservation of covered species and protection of their essential habitat within the plan area. Where we have approved HCPs or NCCP/HCPs, lands that we ordinarily would define as critical habitat for covered species will normally be protected in reserves or through other conservation methods by the terms of the HCPs or NCCP/HCPs and their Implementing Agreements (IAs). These HCPs or NCCP/HCPs and IAs include management measures and protections for conservation lands designed to protect, restore, and enhance their value as habitat for covered species.

Another possible benefit to including these lands is that the designation of critical habitat can serve to educate landowners and the public regarding the potential conservation value of an area. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. However, through the HCP development process, which typically involves extensive outreach and opportunity for public review and typically results in formal protection of essential habitat areas, the public is well informed and educated about conservation value of essential habitat lands.

(2) Benefits of Exclusion

The benefits of excluding HCPs or NCCP/HCPs include relieving landowners, communities and counties of any additional regulatory burden that might be imposed by critical habitat. This benefit is particularly compelling because we have made the determination that once an HCP or NCCP/HCP is negotiated and approved by us after public comment, activities consistent with the plan will satisfy the requirements of the Act. Many HCPs or NCCP/HCPs, particularly large regional HCPs or NCCP/HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the conservation of covered species. Imposing an additional regulatory review after HCP or NCCP/HCP completion may jeopardize conservation efforts and partnerships in many areas, and could be viewed as a disincentive to those developing HCPs or NCCP/HCPs. Excluding HCPs or NCCP/HCPs provides us an opportunity to streamline regulatory compliance,

and provides regulatory certainty for HCP and NCCP/HCP participants.

Another benefit of excluding HCPs or NCCP/HCPs is that it would encourage the continued development of partnerships with HCP or NCCP/HCPs participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish. By excluding areas covered by HCPs or NCCP/HCPs from critical habitat designation, we clearly maintain our commitments, preserve these partnerships, and, we believe, set the stage for more effective conservation actions in the future.

In addition, an HCP or NCCP/HCP application must undergo consultation pursuant to section 7 of the Act. While this consultation will not include a formal evaluation of the plan's potential to adversely modify critical habitat unless critical habitat has already been designated within the proposed plan area, it will carefully analyze the effects of the plan on essential habitat areas as part of its jeopardy analysis under section 7 of the Act and as part of its evaluation of the adequacy of the plan under section 10 of the Act. Because virtually all HCPs or NCCP/HCPs, particularly large regional HCPs or NCCP/HCPs are developed to minimize and mitigate the impacts of take (as defined in the Act) of covered species resulting from habitat loss within the plan area, a fundamental goal of these plans is to identify and protect habitat essential to the covered species while directing development to non-habitat or lower quality habitat areas. Thus, the plan's effectiveness in protecting essential habitat within the plan boundaries and habitat issues within the plan boundaries will have been thoroughly addressed in the HCP or NCCP/HCP and consulted upon. Future Federal actions that may affect listed species would continue to require consultation under section 7 of the Act.

Further, HCPs and NCCP/HCPs typically provide for greater conservation benefits to a covered species than consultations pursuant to section 7 of the Act because HCPs and NCCP/HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5 Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by consultations under section 7 of the Act that, in contrast to HCPs, often do not commit the project proponent to long-term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits an HCP or NCCP/HCP provides. The development and implementation of an HCP or NCCP/HCP provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species conservation, and the creation of innovative solutions to conserve species while allowing for development.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

In general, we find that the benefits of critical habitat designation for the southwestern willow flycatcher on lands within approved HCPs that cover this subspecies are small while the benefits of excluding such lands from designation of critical habitat are substantial. After weighing the small benefits of including these lands against the much greater benefits derived from exclusion, including encouraging the pursuit of additional conservation partnerships, we are excluding lands within the approved and legally operative Western Riverside County MSHCP and subareas of the San Diego MSCP from proposed critical habitat for the southwestern willow flycatcher.

We find that the MSCHP and the MSCP adequately protect essential southwestern willow flycatcher habitat within their boundaries and provide appropriate management to maintain and enhance the long term value of such habitat. The education benefits of critical habitat designation have been achieved through the public outreach, and notice and comment procedures required prior to approval of these plans. For these reasons, then, we find that designation of critical habitat has little benefit in areas covered by these HCPs and that such benefits are outweighed by the benefits of maintaining proactive partnerships with plan participants and encouraging additional conservation partnerships that will result from exclusion of essential habitat in these plan areas. We also find that the exclusion of these lands from proposed critical habitat will not result in the extinction of the southwestern willow flycatcher, nor hinder its recovery because these HCPs have already been evaluated under section 7 of the Act to ensure that their implementation will not jeopardize the continued existence of the subspecies.

A discussion of pending HCPs or NCCP/HCPs that we identified as having areas determined to be essential to the conservation of the southwestern willow flycatcher follows.

San Diego Management Unit

The City of Carlsbad's Habitat Management Plan (HMP) has been in development for several years. This plan is one of seven subarea plans being developed under the umbrella of the North County Multiple Habitat Conservation Plan (MHCP) in northern San Diego County. Participants in this regional conservation planning effort include the cities of Carlsbad, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach, and Vista. The subarea plans in development are also proposed as subregional plans under the State's NCCP and are being developed in cooperation with the California Department of Fish and Game (CDFG). We have determined that portions of lands within the boundaries of the HMP contain essential habitat for the southwestern willow flycatcher, including all of Agua Hedionda Lagoon and a portion of Agua Hedionda Creek.

In developing critical habitat designations, we have analyzed habitat conservation planning efforts to determine if the benefits of excluding them from critical habitat outweigh the benefits of including them in designated critical habitat. In reviewing HCPs, we have assessed the potential impacts of critical habitat designation on lands covered by HCPs on future partnerships, the status of HCP efforts and progress made in developing and implementing such plans, and their relationship to the conservation of species. We have determined that an HCP not yet completed may be considered for exclusion from critical habitat designation pursuant to the section 4(b)(2) of the Act.

Approximately 24,570 ac (9,943 ha) of land are within the Carlsbad HMP planning area, with about 8,800 ac (3,561 ha) remaining as natural habitat for species covered under the plan. Of this remaining habitat, the Carlsbad HMP proposes to establish a preserve system for approximately 6,786 ac (2,746 ha).

The City of Carlsbad has demonstrated a sustained commitment to develop its HMP to comply with the section 10(a)(1)(B) of the Act, the California Endangered Species Act, and the State's NCCP program. On June 4, 2004, we published a Notice of Availability of a Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the North County MHCP, and the City of Carlsbad's HMP, draft Urgency Ordinance and Implementing Agreement. Public comment on these documents was accepted until July 6, 2004.

Although not yet completed and implemented, the City of Carlsbad has made significant progress in the development of its HMP to meet the requirements outlined in section 10(a)(1)(B) of the Act. In light of our confidence that the City of Carlsbad will reach a successful conclusion to its HMP development process, we are excluding lands within their jurisdiction from the critical habitat designation for the southwestern willow flycatcher.

Benefits of Inclusion

As stated previously, the benefits of designating critical habitat on lands within the boundaries of approved HCPs are normally small. Where HCPs are in place that include coverage for the southwestern willow flycatcher, our experience has shown that the HCPs and their Implementing Agreements include management measures and protections designed to protect, restore, enhance, manage, and monitor habitat to benefit the conservation of species. The principal benefit of designating critical habitat is that projects carried out, authorized, or funded by Federal agencies that may affect a listed species require the action agency to consult with us to ensure such activities do not destroy or adversely modify designated critical habitat. In the case of the City of Carlsbad, their HMP will be analyzed by us to determine the effects of the plan on the species for which the participants are seeking incidental take permits. The HMP currently under review by us reflects revisions made to the plan based on comments and input from us, CDFG, and the California Coastal Commission.

Benefits of Exclusion

Excluding lands within the City of Carlsbad's HMP area from critical habitat designation will enhance our ability to work with the City in the spirit of cooperation and partnership. Additionally, other participating jurisdictions in the MHCP will likely continue working with us in a positive, cooperative effort to complete their respective subarea plans to conserve species and their habitat within the MHCP area. A more detailed discussion concerning our rationale for excluding HCPs from critical habitat designation is outlined under the previous section regarding the exclusion of approved HCPs. Further, we believe the analysis conducted to evaluate the benefits of excluding approved HCPs from critical habitat designation is applicable and appropriate to apply to the City of Carlsbad's HMP. We also find that the exclusion of the lands within the City of Carlsbad's HMP planning area from proposed critical habitat will not result in the extinction of the southwestern willow flycatcher, nor hinder its recovery because we have conducted a preliminary analysis to ensure that the implementation of the HMP will not jeopardize the continued existence of the subspecies.

Relationship of Critical Habitat to Military Lands

Santa Ynez Management Unit, CA

San Diego Management Unit, CA

Marine Corps Base, Camp Pendleton (MCBCP)

The Marine Corps Base, Camp Pendleton (MCBCP) is an amphibious training base that promotes combat readiness for military forces and is the only Marine Corps facility on the West Coast where amphibious operations can be combined with air, sea, and ground assault training activities year-round.

Essential habitat for the southwestern willow flycatcher within the boundaries of MCBCP occurs along portions of Cristianitos (6 km/4 mi), San Mateo (5 km/3 mi), San Onofre (6 km/4 mi), Los Flores (8 km/5 mi), Las Pulgas (2 km/1 mi), and DeLuz Creeks (10 km/6 mi), and the Santa Margarita River (45 km/28 mi); however, as discussed below, these areas are being excluded from proposed critical habitat for the flycatcher. In 1995 we completed a section 7 consultation for a Riparian and Estuarine Programmatic Conservation Plan (Conservation Plan) that addresses six federally listed species, including the southwestern willow flycatcher, occurring within the riparian and estuarine/beach areas of MCBCP. We determined in our biological opinion resulting from that section 7 consultation that ongoing training and maintenance activities within riparian/estuarine/beach areas on MCBCP would not jeopardize the continued existence of the southwestern willow flycatcher.

The Conservation Plan is designed to maintain and enhance the biological diversity of the riparian ecosystem on MCBCP and includes promoting the growth of sensitive species, including the southwestern willow flycatcher. Actions to assist in promoting conservation of the southwestern willow flycatcher on MCBCP include maintaining connectivity of riparian habitats; eradicating exotic plant communities to further establishment of successional stages of riparian scrub and riparian woodland habitat; and continuing to implement brown-headed cowbird management. The terms and conditions of the biological opinion for the Conservation Plan form the basis for portions of MCBCP's INRMP that was completed in 2001.

(1) *Benefits of Inclusion*

The primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us pursuant to section 7 of the Act to ensure actions they carry out, authorize, or fund do not destroy or adversely modify designated critical habitat. Absent critical habitat designation, Federal agencies remain obligated under section 7 to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence. The Marine Corps routinely consults with us for activities on MCBCP that may affect federally listed species to ensure that the continued existence of such species are not jeopardized.

Designation of critical habitat may also provide educational benefits by informing land managers of areas essential to the conservation of the southwestern willow flycatcher. In the case of MCBCP there is no appreciable educational benefit because the installation has already demonstrated its knowledge and understanding of essential habitat for the species through the ongoing programmatic consultation, implementation of ''programmatic instructions'' and incorporation of southwestern willow flycatcher locations into MCBCP's geographic information system (Department of the Navy; June 23, 2003 letter).

(2) *Benefits of Exclusion*

The Marine Corps Base, Camp Pendleton (MCBCP) is an amphibious training base that promotes combat readiness for military forces and is the only Marine Corps facility on the West Coast where amphibious operations can be combined with air, sea, and ground assault training activities year-round. Designation of critical habitat in mission-essential training areas would trigger a requirement for the Marine Corps to consult on activities that may affect designated critical habitat and to reinitiate consultation on activities for which a consultation may have already been completed that assessed the effects to a federally listed species on MCBCP. The requirement to undertake additional consultations or revisit already completed consultations specifically to address the effects of activities on designated critical habitat could delay or impair the Marine Corps' ability to train marines and sailors for combat in support of continuous, global deployment to the western Pacific and southwest Asia (Department of the Navy; 2003 letter).

(3) *Benefits of Exclusion Outweigh the Benefits of Inclusion*

Based on the impact to national security and the Marine Corps' need to maintain a high level of military readiness and combat capability, we determine that the benefits of excluding mission-essential training areas from proposed critical habitat for the southwestern willow flycatcher outweigh the benefits of including them in such designation. We, in conducting this analysis pursuant to section 4(b)(2) of the Act, determined that the exclusion of these lands from critical habitat will not result in the extinction of the southwestern willow flycatcher. Although these lands are not included in designated critical habitat, the Marine Corps will still be required to consult with us on activities that may affect the southwestern willow flycatcher, to ensure such activities do not jeopardize the continued existence of the species. Based on our analysis above, we are excluding these lands from proposed critical habitat for the flycatcher pursuant to section 4(b)(2) of the Act based on the potential impacts on national security.

Seal Beach Naval Weapons Station, Fallbrook Detachment

Naval Weapons Station, Fallbrook (Fallbrook NWS) supports combat readiness for the U.S. Navy, Air Force, and Marine Corps. Fallbrook NWS, together with Naval Weapons Station Seal Beach and Detachment San Diego, functions as a major ordnance storage, maintenance, production and distribution facility for the western United States. Fallbrook NWS stores over 3,000 tons of ordnance and is the primary supply point for amphibious assault ships and Marine Corps training ammunition on the west coast and provides crucial support for mission-essential training activities on MCBCP. In light of the installation's function as a weapons storage area, significant parts of Fallbrook NWS remain free of infrastructure due to safety concerns. This has resulted in minimal affects to surrounding habitat, including portions of the Santa Margarita River. The Fallbrook NWS has provided private researchers and the general public with opportunities for scientific and educational pursuits on the installation while controlling access to sensitive habitat areas to avoid causing inadvertent harm to species, including the southwestern willow flycatcher.

Currently, Fallbrook NWS is working cooperatively with us to develop a INRMP that is proposed to address the conservation needs of the southwestern willow flycatcher. A Fire Management Plan (FMP) for Fallbrook NWS was completed in 2003 and is a primary component of the installation's effort to develop and implement an INRMP. Based on information provided in the FMP, breeding and/or territorial flycatchers have not been detected on Fallbrook NWS since the listing of the flycatcher under the Act, with all recent sightings determined to be transient birds. Measures to offset, avoid or minimize affects to the least Bell's vireo—another riparian dependent species—as described in our biological opinion on the FMP are also adequate to avoid effects on transient southwestern willow flycatchers. Additionally, Fallbrook NWS has agreed to provide information to us regarding any future sightings of southwestern willow flycatchers and will conduct follow-up surveys to determine their breeding status. If breeding or territorial flycatchers are detected on the Fallbrook NWS, the U.S. Navy and we will cooperate to determine whether additional measures to avoid and minimize the effects of fire management activities on the southwestern willow flycatcher are necessary.

(1) *Benefits of Inclusion*

The primary benefit of critical habitat with regard to activities that require consultation pursuant to section 7 of the Act is to ensure that an activity does not destroy or adversely modify designated critical habitat. Benefits associated with proposing critical habitat on mission-essential training lands on Fallbrook NWS are limited.

Designation of critical habitat on portions of the Santa Margarita River that lie within the boundaries of the Fallbrook NWS would require the U.S. Navy to consult with us on proposed activities to ensure they will not adversely modify or destroy critical habitat. Since no military training activities occur on Fallbrook NWS and given the fact we have completed a consultation with the installation for a fire management plan that will serve as a principle component of the installation's INRMP, there is likely little additional benefit from designating critical habitat on Fallbrook NWS.

The educational benefits of critical habitat designation include informing the U.S. Marine Corps and U.S. Navy of areas that are essential to the conservation of the southwestern willow flycatcher. This information has already been provided to the Marine Corps and the Navy through the completion of consultations pursuant to section 7 of the Act.

(2) *Benefits of Exclusion*

Designation of critical habitat for the southwestern willow flycatcher on Fallbrook NWS would require reinitiation of consultation on the FMP that was completed in 2003, possibly leading to additional delays in the completion of the INRMP.

(3) *Benefits of Exclusion Outweigh Benefits of Inclusion*

Given the low impact use that occurs on Fallbrook NWS and the ongoing cooperation between us and the Navy to complete the INRMP, the requirement to consult on critical habitat would potentially require Fallbrook NWS to expend time to reinitiate consultation on its FMP before moving forward with work on the INRMP. We believe that, when completed and adopted, the Fallbrook NWS INRMP will provide an equal or greater benefit to southwestern willow flycatchers than a critical habitat designation. Based on our analysis above, we are excluding these lands from proposed critical habitat for the flycatcher pursuant to section 4(b)(2) of the Act based on the potential impacts on national security. We also find that the exclusion of lands within Fallbrook NWS from proposed critical habitat will not result in the extinction of the southwestern willow flycatcher, nor hinder its recovery because the FMP has already been evaluated under section 7 of the Act to ensure that its implementation will not jeopardize the continued existence of the subspecies.

Roosevelt, Middle Gila/San Pedro, and Verde Management Units, AZ

Roosevelt Lake HCP

An HCP for Salt River Project (SRP) was completed for the operation of Roosevelt Dam in Gila and Maricopa Counties, which included as the action area the perimeter of Roosevelt Lake's high water mark (ERO 2002). The Record of Decision for the HCP was dated February 27, 2003. The land within the Roosevelt Lake perimeter is Federal land withdrawn by the U.S. Bureau of Reclamation and managed by the U.S. Forest Service. The flycatcher population at Roosevelt Lake, depending on the year, can be the largest population of nesting southwestern willow flycatchers across the subspecies range (approximately 150 territories, plus an unknown number of unmated floating/non-breeding flycatchers and fledglings). Operation of Roosevelt Dam during low water years can yield as much as 506 ha (1,250 ac) of occupied flycatcher habitat within the perimeter of the high water mark. Annually, the total available habitat varies as reservoir levels fluctuate depending on annual precipitation with dry years yielding proportionally more habitat. We anticipated that creation

and loss of habitat would occur over the life of the HCP. Flycatcher habitat at Roosevelt Lake varies depending on how and when the lake recedes as a result of water in-flow and subsequent storage capacity and delivery needs. As the lake recedes, flat-gradient, fine moist soils are exposed which provide seed beds for riparian vegetation. The size of Roosevelt Lake, and therefore the amount and location of flycatcher habitat, can vary greatly due to dam operations, floods, and drought. However, even in the expected high-water years, we determined that some flycatcher habitat would persist at Roosevelt Lake providing a net benefit to the bird.

The HCP covers Roosevelt Dam operations for 50 years and involves the conservation of a minimum of 607 ha (1,500 ac) of flycatcher habitat off site, outside of the Roosevelt Management Unit, on the San Pedro, Verde, and/or Gila rivers, and possibly other streams in Arizona, and implementation of conservation measures to protect up to an additional 304 ha (750 ac) of flycatcher habitat. Measures in the HCP included having the Forest Service hire a Forest Service employee to patrol and improve protection of flycatcher habitat in the Roosevelt lakebed from adverse recreation activities.

Currently, within our proposed critical habitat areas, habitat has been acquired at three properties (Adobe Preserve, Spirit Hollow, and Gilleland) along the lower San Pedro River (Middle Gila/San Pedro Management Unit), and a single property along the Verde River (Verde Management Unit) (Beta Ventures). The riparian area for each property is 22 ha (54 ac) for Adobe, 32 ha (80 ac) for Spirit Hollow, 16 ha (40 ac) for Gilleland, and approximately 40 ha (100 ac) for Beta Ventures/Superior. More habitat acquisition is needed to complete the mitigation requirements of the HCP and permit.

The conclusion provided in the biological opinion required in order to issue the HCP permit, was based upon the persistence of varying degrees of occupied southwestern willow flycatcher habitat that, at a minimum, could possibly reach the numerical (50 territories) and distribution goals (within Roosevelt Management Unit) established in the Recovery Plan, under full operation of Roosevelt Dam with an HCP. The permittee (ERO 2002) estimated that an average of 121 to 162 ha (300 to 400 ac) of suitable habitat (thus about 60 to 81 ha/150 to 200 ac of occupied habitat) would be present during the life of the permit, which could support 45 to 90 territories. Even in a worse case flood event, 15 to 30 territories are expected to persist. Under more favorable habitat conditions, the area between the existing pool and the high water mark has supported the largest local population of flycatchers throughout the subspecies range (approximately 150 pairs). The basis for the full-time USFS employee is to minimize the effects of on-the-ground actions (livestock grazing, recreation, fire, habitat clearing, development, roads, fencing, boating, gravel collection, off-highway vehicles, etc.), not at the discretion or under the control of SRP. While it is not possible to fully protect these areas with an on-the-ground officer, the HCP provides an additional level of protection that would not otherwise be available to the habitat.

We are proposing to exclude this HCP from critical habitat designation because it is already managed to protect the primary constituent elements and also because under section 4(b)(2) of the Act, we find the benefits of exclusion exceed the benefits of inclusion. Our determination under section 4(b)(2) is based on two factors, first HCPs typically provide for greater conservation benefits to a covered species than consultations pursuant to section 7 of the Act because HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5 Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by consultations under section 7 of the Act that, in contrast to HCPs, often do not commit the project proponent to long-term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits an HCP provides. The development and implementation of an HCP provides other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species conservation, and the creation of innovative solutions to conserve species while allowing for development. Secondly, a designation of the reservoir bottom would potentially affect the ability of the reservoir to provide water supply and flood control protection downstream with potentially catastrophic health and safety consequences for the population below the dam. There may be additional economic consequences to designation that we have not identified at this point but which will be addressed in the economic analysis that will be conducted on this proposed designation. For the abovementioned reasons, we are proposing to exclude Roosevelt dam and its perimeter areas from designation of critical habitat.

Areas Proposed as Critical Habitat That May Be Considered for Exclusion From the Final Designation

Below we discuss areas identified as having habitat that is essential to the southwestern willow flycatcher including, State Wildlife Areas, National Wildlife Refuge lands, and Tribal and Pueblo lands that are included in this proposal, but that we may consider for exclusion from the final designation of critical habitat based upon further analysis and public comment.

Relationship of Critical Habitat to State Conservation Plans

Pahranagat Management Unit, NV

Key Pittman State Wildlife Area

The Key Pittman Wildlife Area is located in Lincoln County, NV, and contains a wide diversity of habitats within its 539 ha (1,332 ac). The Pahranagat River travels through portion of the Key Pittman Wildlife Area, including Nesbitt Lake, an impounded area along the river. The State of Nevada's Department of Wildlife owns and manages this property. The Nevada Fish and Game Commission purchased portions of the area in 1962 and 1966, primarily for waterfowl hunting, and as a secondary goal, habitat for other wetland species. A draft management plan was completed in November 2003 and provides the framework for the next 10 years. The plan went through stakeholder meetings and public review.

We determined that the entire stretch of the Pahranagat River, through this Wildlife Area, is essential to the conservation of the southwestern willow flycatcher. A total of 4 to 10 southwestern willow flycatcher territories have been detected since 1999, 9 were detected in 2002. The State of Nevada fences the known flycatcher habitat in order to protect it from livestock grazing, manages water to maintain habitat, monitors the status of flycatchers, and is actively planting riparian plants to improve the distribution of riparian habitat. While the plan has not been finalized, the area has been under management for wildlife since the 1960s, targets waterfowl, wetland species, and specifically the southwestern willow flycatcher. At this time we are not excluding or proposing to exclude this area from critical habitat for the flycatcher, but we may exclude it from the final designation after further analysis and public comment.

Overton State Wildlife Area

The Overton Wildlife Area is located in Clark County, NV, and contains a wide diversity of habitats within its 7146 ha (17,657 ac). The Muddy River travels through a small portion of the State Wildlife Management Area near Lake Mead. The State of Nevada's Department of Wildlife owns and manages this property. A management plan was completed in December 2000 and provides the framework for the next 10 years. The plan went through stakeholder meetings and public review.

We determined that the entire 3 km (2 mi) stretch of the Muddy River through the Overton Wildlife Area is essential to the conservation of the southwestern willow flycatcher. A total of one to two southwestern willow flycatcher territories have been detected within the Overton Wildlife Area on the Muddy River since 1997. Riparian habitat is being enhanced and protected for neotropical migratory birds including southwestern willow flycatchers. A minimum of a quarter-acre willow patch and varying amount of cottonwood, mesquite, and hackberry will be planted annually in locations able to support native riparian trees, and water is being managed to improve and maintain riparian habitat. Riparian habitat is protected from livestock grazing, because no grazing occurs in the Wildlife Area. This Wildlife Area was developed for wetland habitat and waterfowl activities (including hunting). As a result, flycatcher-related riparian habitat maintenance activities described in the management plan are consistent with the management goals of the Wildlife Area. At this time we are not excluding or proposing to exclude this area from critical habitat for the flycatcher, but we may exclude it from the final designation after further analysis and public comment.

Relationship of Critical Habitat to National Wildlife Refuge Lands

We have determined that areas essential to the conservation of the southwestern willow flycatcher include the following National Wildlife Refuges (NWR): Bill Williams NWR, Parker, AZ; Cibola NWR, Blythe, AZ; Imperial NWR, Yuma, AZ; Havasu NWR, Needles, CA; Alamosa/Monte Vista NWR, Alamosa, CO; Bosque del Apache and Sevilleta NWRs, Socorro, NM; and Pahranagat NWR, Alamo, NV. All of these refuges will be developing or in some cases (Sevilleta and Alamosa NWRs) have developed comprehensive resource management plans that will provide for protection and management of all trust resources, including federally listed species and sensitive natural habitats. These plans, and many of the management actions undertaken to implement them, will have to undergo consultation under section 7 of the Act and be evaluated for their consistency with the conservation needs of listed species. We believe that there is minimal benefit from designating critical habitat for the southwestern willow flycatcher within NWR lands because these lands are already managed for the conservation of wildlife. At this time we are not excluding or proposing to exclude NWRs, but may exclude them from the final designation after further analysis and public comment.

Relationship of Critical Habitat to Tribal Lands

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in many cases, designation of tribal lands as critical habitat provides very little additional benefit to threatened and endangered species. Conversely, such designation is often viewed by tribes as an unwanted intrusion into tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

We have determined that the following tribes and pueblos have lands essential to the conservation of the southwestern willow flycatcher: Camp Verde, Chemehuevi, Colorado River, Fort Mojave, Fort Yuma, Hualapai, Isleta, La Jolla, Pala, Rincon, San Carlos, San Illdefonso, San Juan, Santa Clara, Santa Ysabel, and Yavapai Apache. In making our final decision with regard to tribal lands, we will be considering several factors including our relationship with the Tribe or Pueblo and whether a management plan has been developed for the conservation of the southwestern willow flycatcher on their lands. At this time, we have received draft management plans from the Colorado River Indian Tribes and the Hualapai Tribe, as discussed below, and we expect that additional management plans will be received during the public comment period. In addition, the Pueblo of Santa Ana has entered into a Safe Harbor Agreement with us that details the conservation measures to be implemented on their lands as further discussed below. We will continue to work with the Tribes and Pueblos during the comment period on the development of management plans for their lands. We note that additional areas will likely be considered for exclusion in the final rule and that any exclusions made in the final rule will be the result of a reanalysis of any new information received, including consideration of all comments received and the findings of the economic and NEPA analyses.

Parker to Southerly International Border Management Unit, AZ

Hualapai Tribe

The Hualapai Tribe sits alongside a segment of essential southwestern willow flycatcher habitat along the Colorado River on the south side of the channel. The Hualapai Tribe had no known southwestern willow flycatcher territories in 2003, but has eight sites where territories have previously been. The Hualapai Tribe has been active in conducting annual flycatcher surveys.

The Hualapai Tribe has submitted a draft Southwestern Willow Flycatcher Management Plan, which describes the protections and assurances for the flycatcher. The Hualapai Department of Natural Resources Division, and other cooperators assure long-term protection of southwestern willow flycatcher habitat, while maintaining a recreational and tourist industry and traditional values. If a final Management Plan is received from the Hualapai Nation that meets the conservation needs of the species and assurances for implementation and success, we anticipate that the Hualapai Nation may be excluded from the final designation.

Colorado Indian Tribes

We determined that the Colorado Indian Tribes have areas that are essential to the conservation of the southwestern willow flycatcher along the Colorado River. The Colorado River Indian Tribes have no known southwestern willow flycatcher territories, but have been active in riparian restoration within tribal boundaries. The Colorado River Indian Tribes have submitted a draft

Southwestern Willow Flycatcher Management Plan, which describes the protections and assurances for the flycatcher. If a final Management Plan is received from the Colorado River Indian Tribes that meets the conservation needs of the species and assurances for implementation and success, we anticipate that lands within the tribal boundaries of the Colorado River Indian Nations may be excluded from the final designation.

San Carlos Apache Tribe

The San Carlos Apache Tribe is currently drafting a conservation plan for the southwestern willow flycatcher. It is our understanding that the plan is tentatively scheduled for completion in early 2005. We intend to work with the Tribe to assist in this process and to help ensure that the final conservation plan is submitted to us during the public comment period so that we can consider it in our final critical habitat determination.

The Tribe highly values its wildlife and natural resources which it is charged to preserve and protect under the Tribal Constitution. Consequently, the Tribe has long worked to manage the habitat of wildlife on its tribal lands, including the habitat of endangered and threatened species. We understand that it is the Tribe's position that a designation of critical habitat on its lands improperly infringes upon their tribal sovereignty and the right to self-government.

We also evaluated the following HCPs during the development of this proposed rule and determined that, at this time, we do not have adequate justification to exclude these area under section 4(b)(2) of the Act. As noted above, we will evaluate all comments received and the findings of the economic and NEPA analyses which may lead us to consider excluding these areas from the final critical habitat designation based upon new information.

Virgin Management Unit, NV

Clark County Multiple Species Habitat Conservation Plan (MSHCP)

The Clark County MSHCP, permitted in early 2001, included 78 species, 2 of which are federally listed (desert tortoise and southwestern willow flycatcher). Six of the 78 species are riparian dependent birds. The permit was conditioned so that incidental take of southwestern willow flycatchers and the other riparian birds would not be authorized until certain obligations were met by the permittees. Those obligations include: (1) The permittees are required to acquire private lands in desert riparian habitats along the Muddy and Virgin Rivers, and Meadow Valley Wash; and (2) the permittees are required to develop conservation management strategies for the Virgin River, Muddy River, and Meadow Valley Wash, within which the total number and locations of acres of riparian habitat to be acquired within each watershed will be identified. While planning for the Virgin River watershed is underway, neither of these two required planning efforts are developed enough in order to provide assurances and protections for the southwestern willow flycatcher. As a result, we are not excluding any essential habitat along the Virgin River from proposed critical habitat for the southwestern willow flycatcher on the basis of the Clark County MSHCP.

Hoover to Parker, Parker to Southerly International Border, Middle Colorado, Virgin, and Pahranagat Management units, AZ

Lower Colorado River Multi-Species Conservation Plan

The Lower Colorado River Multi-Species Conservation Plan (LCR MSCP) is being developed for areas along the lower Colorado River along the borders of Arizona, California, and Nevada, from Lake Mead to Mexico. The Management Units primarily encompassed in the LCR MSCP are the Hoover to Parker and Parker to Southerly International Border Management units along the Arizona/California border. Streams in the Middle Colorado (Colorado River), Virgin (Virgin River), and Pahranagat (Muddy River) Management units in Arizona, Utah, and Nevada, are only briefly represented where they surround Lake Mead, and may or may not be locations where protection and mitigation occurs. The southwestern willow flycatcher is a key species in the LCR MSCP and the intention of the permittee is to create and maintain 1,639 ha (4,050 ac) of flycatcher habitat over the 50-year life of the permit. A draft HCP was released to the public in June 2004. If we determine that the LCR MSCP adequately addresses the conservation needs of the subspecies, we will consider excluding lands of the LCR MSCP represented within the lower Colorado River from the final designation of critical habitat for the southwestern willow flycatcher. The basis for this decision is as follows: We anticipate the LCR MSCP will result in increasing important southwestern willow flycatcher habitat as a result of restoration projects during the 50-year life of the project; the LCR MSCP has been released as a draft, as noted above, with sufficient budget commitments to assure successful implementation; and compliance performance criteria require that these restoration projects which have been identified in the LCR MSCP have to be met for projects to be compliant with the terms of the permit.

Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define ''jeopardize the continued existence of'' as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). ''Destruction or adverse modification of designated critical habitat'' for this species would include habitat alterations that appreciably diminish the value of critical habitat by significantly affecting any of those physical or biological features that were the basis for determining the habitat to be critical. We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their proposed actions. The conservation measures in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide ''reasonable and prudent alternatives'' to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Service's Regional Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

Federal activities that may affect southwestern willow flycatcher or its critical habitat will require consultation under section 7. Activities on private, State, or county lands, or lands under local jurisdictions requiring a permit from a Federal agency, such as Federal Highway Administration or Federal Emergency Management Act funding, or a permit from the Corps under section 404 of the Clean Water Act, will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of southwestern willow flycatcher is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency that may affect the southwestern willow flycatcher and which may require consultation under section 7 of the Act to determine if they adversely modify critical habitat include, but are not limited to:

(1) Removing, thinning, or destroying riparian vegetation without a riparian restoration plan to cause habitat to become of equal or better quality in abundance and extent. Activities that remove, thin, or destroy riparian vegetation, by mechanical, chemical (herbicides or burning), or biological (grazing, biocontrol agents) means reduce constituent elements for southwestern willow flycatcher sheltering, feeding, breeding, and migrating.

(2) Activities that appreciably diminish habitat value or quality through direct or indirect effects (*e.g.*, degradation of watershed and soil characteristics, diminishing surface and subsurface flow, altering flow regimes, introduction of exotic plants, animals, or insects, or fragmentation of habitat);

(3) Alteration of current surface water diversion or impoundment, groundwater pumping, dam operation, or any other activity which changes the frequency, magnitude, duration, timing or abundance of surface flow (Poff *et al.* 1997), and/or quantity/quality of subsurface water flow in a manner which permanently reduces available riparian habitats by reducing food availability, or the general suitability, quality, structure, abundance, longevity, vigor, micro-habitat components, and distribution of riparian habitat for nesting or migrating.

(4) Permanent destruction/alteration of the species habitat by discharge of fill material, draining, ditching, tiling, pond construction, and stream channelization (*i.e.*, due to roads, construction of bridges, impoundments, discharge pipes, stormwater detention basins, dikes, levees, etc.).

(5) Management of livestock in a manner that reduces the volume and composition of riparian vegetation, physically disturbs nests, alters floodplain dynamics such that regeneration of riparian habitat is impaired or precluded, facilitates brood parasitism by brown-headed cowbirds, alters watershed and soil characteristics, alters stream morphology , and facilitates abundance and extent of exotic species.

The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the flycatcher. Federal activities outside of critical habitat are still subject to review under section 7 if they may affect the flycatcher. The prohibitions of section 9 also continue to apply both inside and outside of designated critical habitat.

In general, activities that do not remove or appreciably degrade constituent elements of habitat for southwestern willow flycatchers are not likely to destroy or adversely modify critical habitat. For example, certain dam operations, like Roosevelt Dam in central AZ, allow water to significantly increase and decrease in the conservation space depending on availability and demand. This fluctuation results in the exposure of fine/moist soils in the flat/broad floodplain of the exposed ground and has led to the development of hundreds of acres of flycatcher habitat. The same operating regime that creates the habitat will also inundate and cause loss of habitat; at this particular location, habitat is expected to persist on the perimeter and over time will increase and decrease (USFWS 2003). It is this very process of the ebb and flow of the conservation pool that ensures persistence of habitat over time, although that habitat will vary spatially and temporally, as does flycatcher habitat in natural settings. As a result, the dry conservation space would not be adversely modified when inundated as long as the action is covered by an operative HCP. Riparian restoration can also cause a temporary loss of habitat. However, if it is combined with positive

site-specific evaluation (through an analysis of on the ground features such as groundwater elevation, etc.) and an implementation/restoration plan (USFWS 2002) that together are expected to cause habitat to become of the same quality or better for the flycatcher, it would be expected that those types of restoration activities would not destroy or adversely modify critical habitat. Each proposed action will be examined pursuant to section 7 of the Act in relation to its site-specific impacts.

All lands proposed as critical habitat are within the geographical area occupied by the species and are essential for the conservation of southwestern willow flycatcher. Federal agencies already consult with us on actions that may affect southwestern willow flycatcher to ensure that their actions do not jeopardize the continued existence of the species. Thus, we do not anticipate substantial additional regulatory protection will result from critical habitat designation.

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat, contact the Supervisor of the appropriate Fish and Wildlife Service Ecological Services Office (see list below). In NM and AZ requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, Post Office Box 1306, Albuquerque, NM 87103–1306 (telephone (505) 248–6920; facsimile (505) 248–6922).

Area/state	Address	Phone No.
So. California	2730 Locker Avenue West, Carlsbad, CA 92009	(760) 431–9440
Central Coastal CA	2493 Portola Road, Suite B, Ventura, CA 93003	(805) 644–1766
Central California	2800 Cottage Way, Sacramento, CA 95821	(916) 414–6600
Nevada	1510 Decatur, Las Vegas, NV 89108	(702) 515–5230
Utah	2369 West Orton Circle, West Valley City, UT 84119	(801) 975–3330
Colorado	764 Horizon Dr. S. Annex A–Bldg. B, Grand Junction, CO 81506	(970) 243–2788
AZ	2321 W. Royal Palm Road Ste. 103, Phoenix, AZ 85021	(602) 242–0210
NM	2105 Osuna Rd. NE., Albuquerque, NM 87113	(505) 761–4718

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic impact, impact on national security, and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

An analysis of the economic impacts of proposing critical habitat for southwestern willow flycatcher is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://arizonaes.fws.gov*, or by contacting the AZ Ecological Services Fish and Wildlife Office directly (see **ADDRESSES** section).

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule as we prepare our final rulemaking. Accordingly, the final designation may differ from this proposal.

Public Hearings

Section 4(b)(5)(E) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (see **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand? Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or adversely affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action. We will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical

habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

This draft economic analysis will be made available for public review and comment before we finalize this designation. At that time, copies of the analysis will be available for downloading from the AZ Ecological Services Fish and Wildlife Service Office's Internet website at *http://arizonaes.fws.gov* or by contacting the AZ Ecological Services Office directly (see **ADDRESSES** section).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. We will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2))

In the draft economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the southwestern willow flycatcher is considered a significant regulatory action under Executive Order 12866 as it may raise novel legal and policy issues. However, this designation is not expected to significantly affect energy supplies, distribution, or use because there are no pipelines, distribution facilities, power grid stations, etc. within the boundaries of proposed critical habitat. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required. We will, however, further evaluate this issue as we conduct our economic analysis and, as appropriate, review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, or permits or who otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. As such, Small Government Agency Plan is not

required. We will, however, further evaluate this issue as we conduct our economic analysis and, as appropriate, review and revise this assessment as warranted.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule is not anticipated to have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Due to current public knowledge of the species protections and the prohibition against take of the species both within and outside of the proposed areas we do not anticipate that property values will be affected by the critical habitat designation. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policies, we requested information from and coordinated development of this proposed critical habitat designation with appropriate State resource agencies in all affected states.

The proposed designation of critical habitat in areas currently occupied by southwestern willow flycatcher imposes no additional significant restrictions beyond those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The proposed designation of critical habitat may have some benefit to the State and local resource agencies in that the areas essential to the conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of this species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of southwestern willow flycatcher.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996). However, when the range of the species includes States within the Tenth Circuit, such as that of the southwestern willow flycatcher, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are Tribal lands essential for the conservation of southwestern willow flycatcher and have sought government-to-government consultation with these Tribes during the scoping process under the NEPA compliance portion of this process. We will continue to seek consultation during the development of the final critical habitat designation.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the AZ Ecological Services Fish and Wildlife Service Office (see **ADDRESSES** section).

Author

The primary authors of this notice are the AZ Ecological Services Office staff (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.95(b), by revising critical habitat for the southwestern willow flycatcher (*Empidonax trailli extimus*) in the same alphabetical order as the species occurs in 17.11(h) to read as follows:

§ 17.95 Critical habitat—Birds.

* * * * *

(b) Birds.

* * * * *

Southwestern Willow Flycatcher

(1) Critical habitat units are depicted for (add counties, states) on the maps and as described below.

(2) The primary constituent elements of critical habitat for southwestern willow flycatcher are:

(i) Nesting habitat with trees and shrubs that include, but are not limited to, willow species and boxelder;

(ii) Dense riparian vegetation with thickets of trees and shrubs ranging in height from 2 m to 30 m (6 to 98 ft) with lower-stature thickets of (2–4 m or 6–13 ft tall) found at higher elevation riparian forests and tall-stature thickets found at middle- and lower-elevation riparian forests;

(iii) Areas of dense riparian foliage at least from the ground level up to approximately 4 m (13 ft) above ground or dense foliage only at the shrub level, or as a low, dense tree canopy;

(iv) Sites for nesting that contain a dense tree and/or shrub canopy (the amount of cover provided by tree and shrub branches measured from the ground) (*i.e.,* a tree or shrub canopy with densities ranging from 50 percent to 100 percent);

(v) Dense patches of riparian forests that are interspersed with small openings of open water or marsh or shorter/sparser vegetation, that creates a mosaic that is not uniformly dense. Patch size may be as small as 0.1 ha (0.25 ac) or as large as 70 ha (175 ac); and

(vi) A variety of insect prey populations, including but not limited to, wasps and bees (Hymenoptera); flies (Diptera); beetles (Coleoptera); butterflies/moths and caterpillars (Lepidoptera); and spittlebugs (Homoptera).

(4) Index map for southwestern willow flycatcher critical habitat follows:

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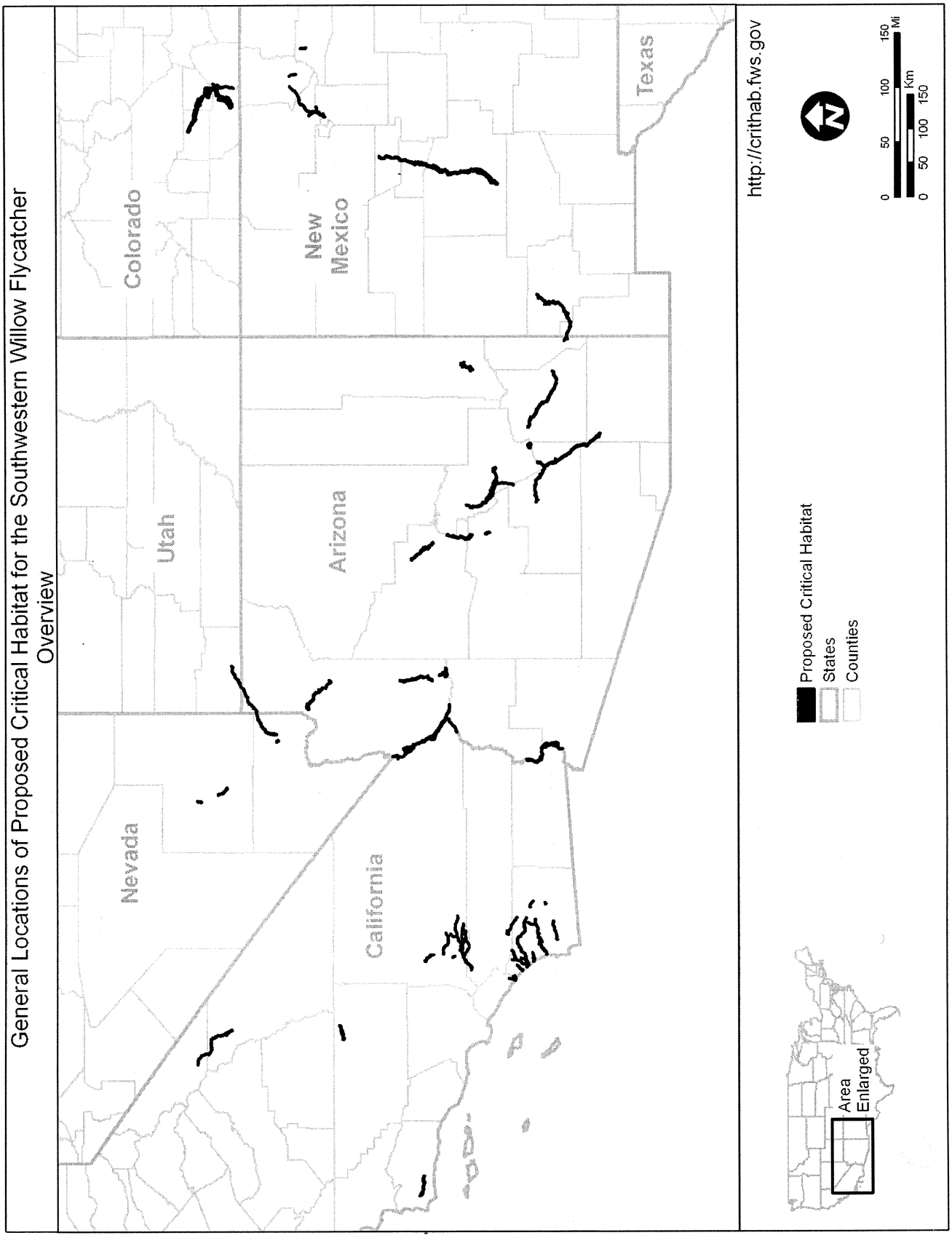
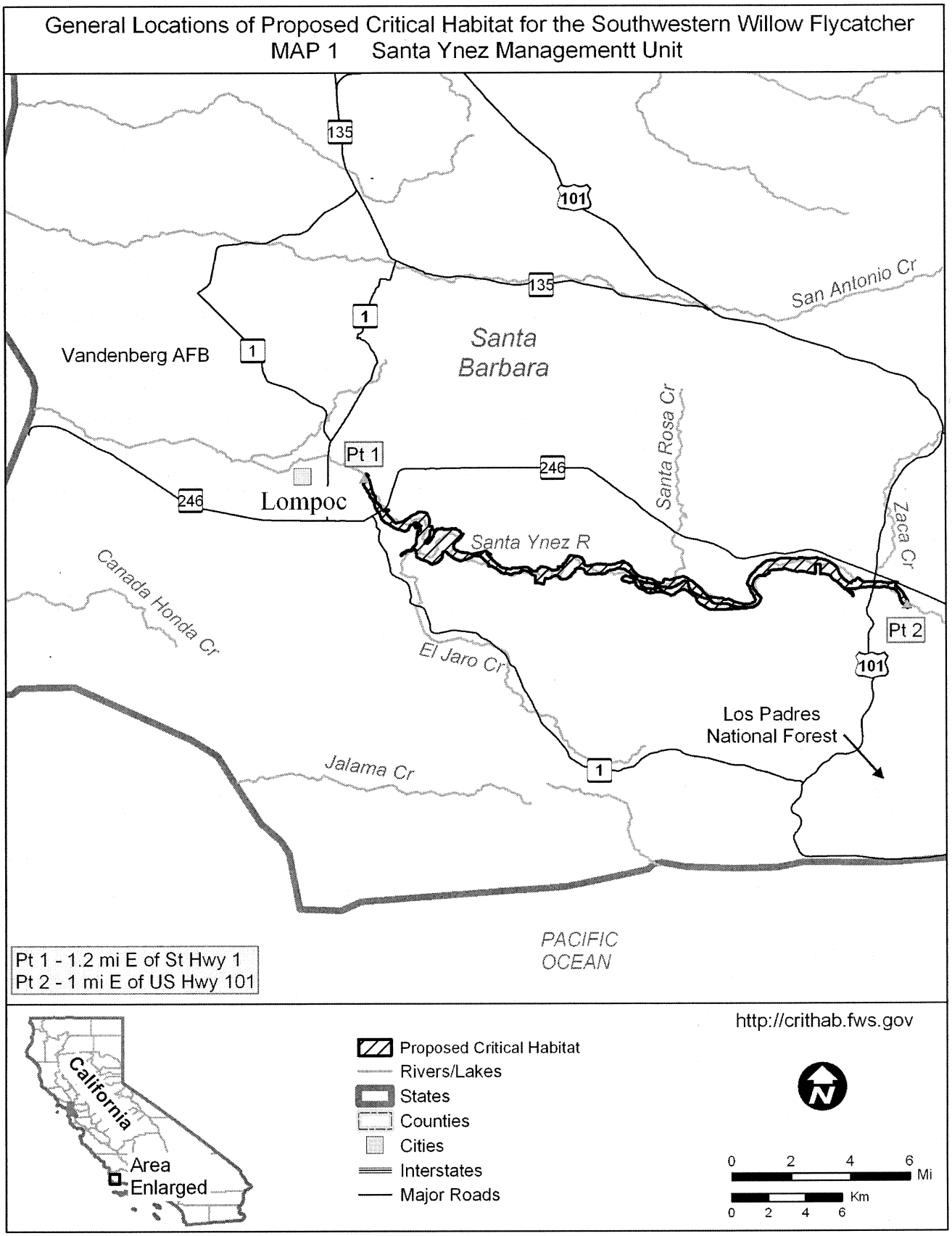


(5) Santa Ynez Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Santa Ynez River	34.5972867	−120.1744120	34.6596711	−120.4394929

(ii) Map 1—Santa Ynez Management Unit follows:

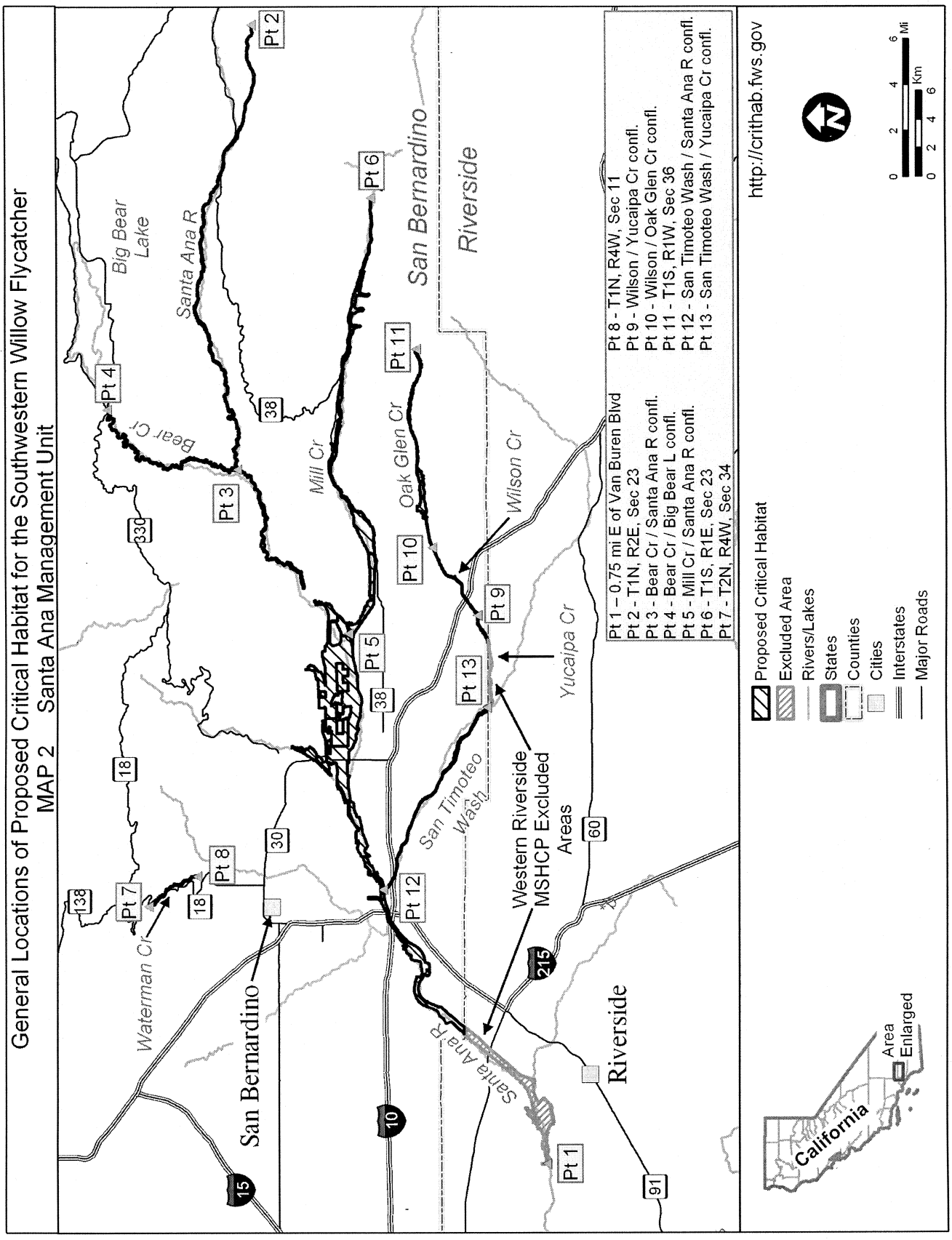


(6) Santa Ana Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Bear Creek	34.1609938	−117.0159635	34.2422368	−116.9781483
Mill Creek	34.0766808	−116.8452498	34.0911325	−117.1197798
Oak Glen Creek	34.0386537	−117.0654996	34.0483711	−116.9403286
San Timoteo Wash	34.0044332	−117.1665810	34.0696755	−117.2814779
Santa Ana River	34.1513289	−116.7359315	33.9673435	−117.4534886
Waterman Creek	34.2170016	−117.2918024	34.1863762	−117.2729851
Wilson Creek	34.0102978	−117.1083328	34.0386336	−117.0654804
Yucaipa Creek	34.0103220	−117.1083693	34.0044334	−117.1665346

(ii) Map 2—Santa Ana Management Unit follows:

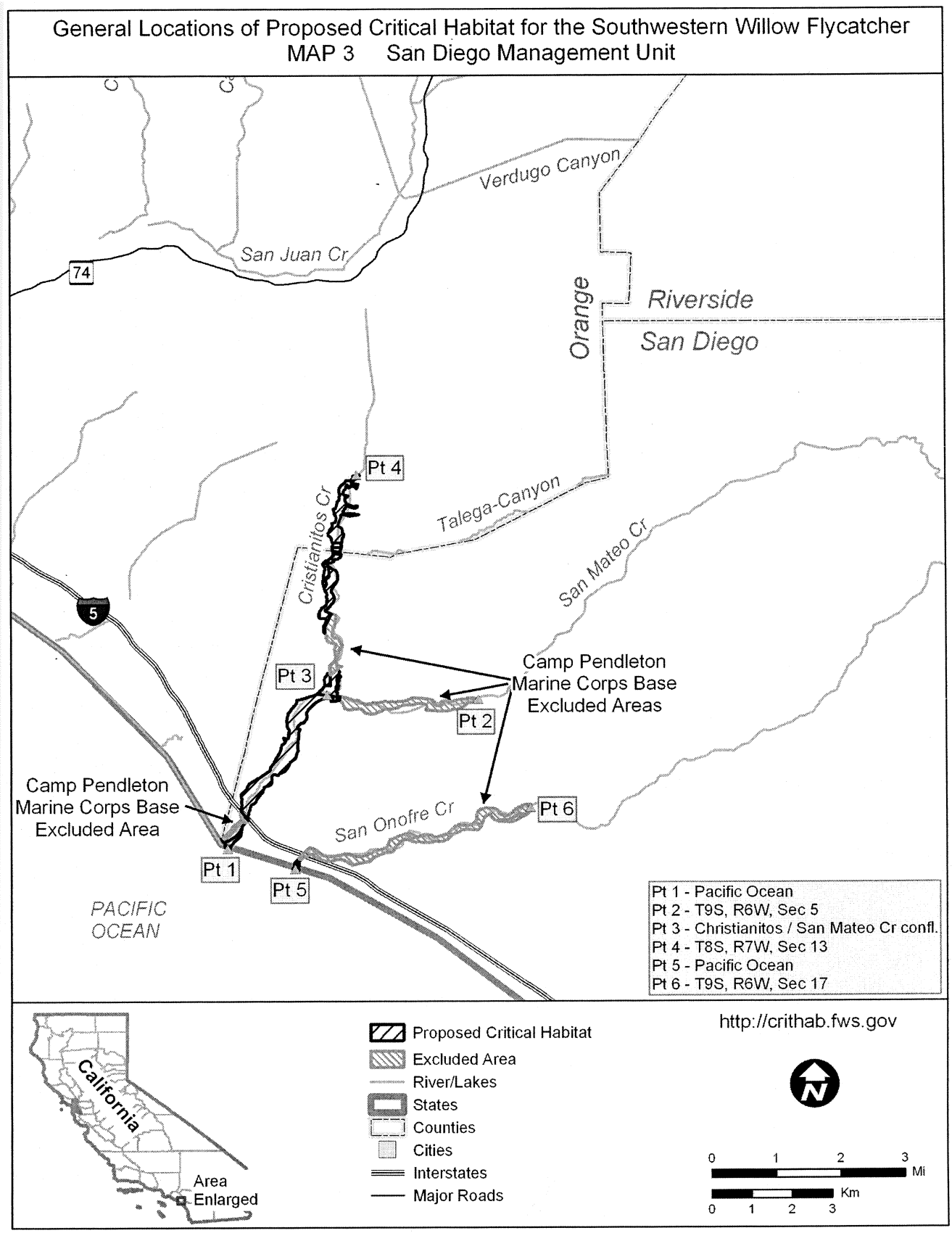


(7) San Diego Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Christianitos Creek	33.4202584	−117.5720194	33.4703241	−117.5652620
San Mateo Creek	33.4193353	−117.5378243	33.3854992	−117.5943532
San Onofre Creek	33.3947909	−117.5262105	33.3808217	−117.5792417

(ii) Map 3—San Diego Management Unit follows:

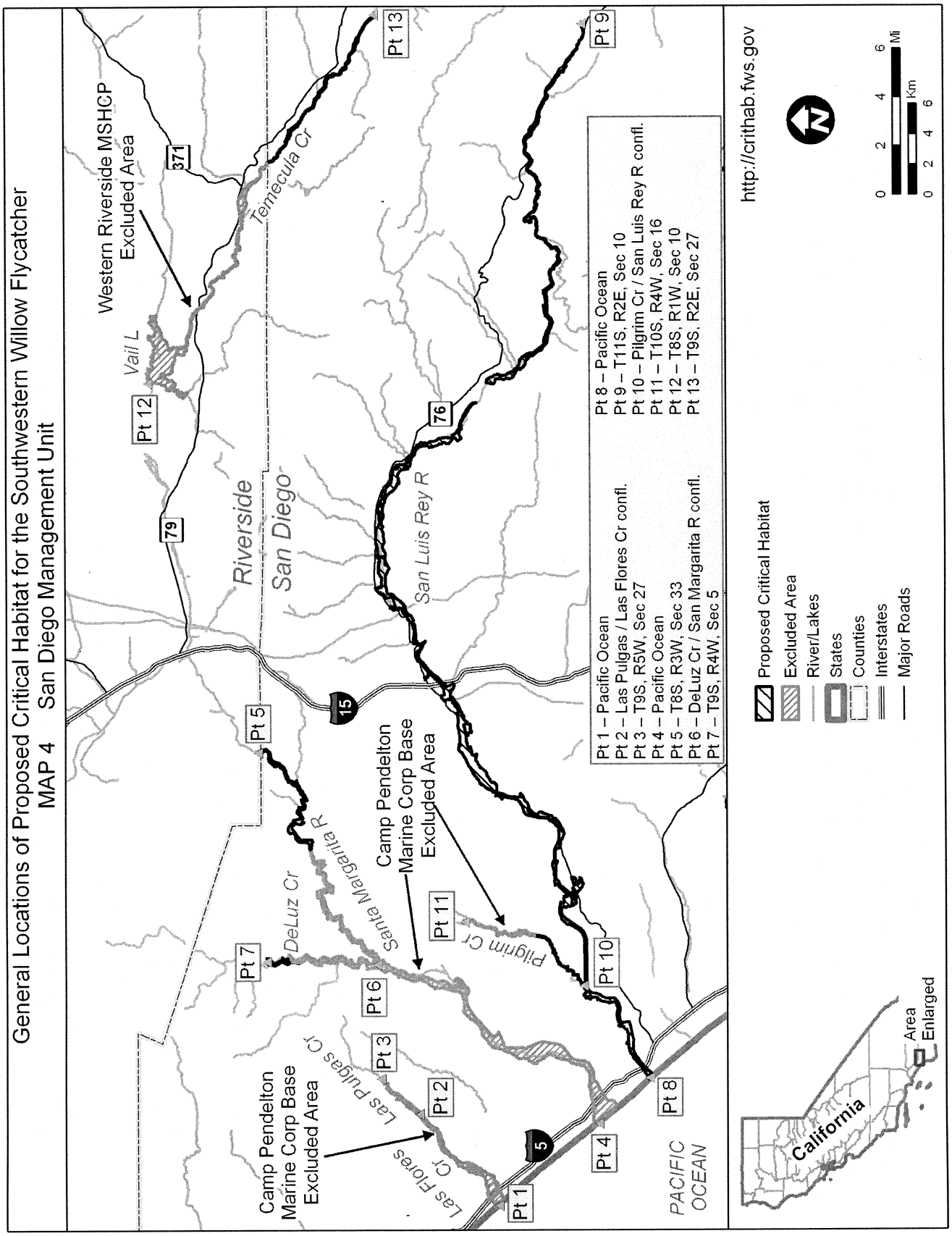


(8) San Diego Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Deluz Creek	33.3631922	−117.3242455	33.4284196	−117.3223795
Las Flores Creek	33.3387002	−117.4124815	33.2918772	−117.4668791
Las Pulgas Creek	33.3612402	−117.3914457	33.3386642	−117.4124221
Pilgrim Creek	33.2412706	−117.3367781	33.3115967	−117.2990787
San Luis Rey River	33.2026402	−117.3910088	33.2408399	−116.7655497
Santa Margarita River	33.4331379	−117.1985136	33.2327182	−117.4180318
Temecula Creek	33.4982611	−116.9782596	33.3637516	−116.7600635

(ii) Map 4—San Diego Management Unit follows:

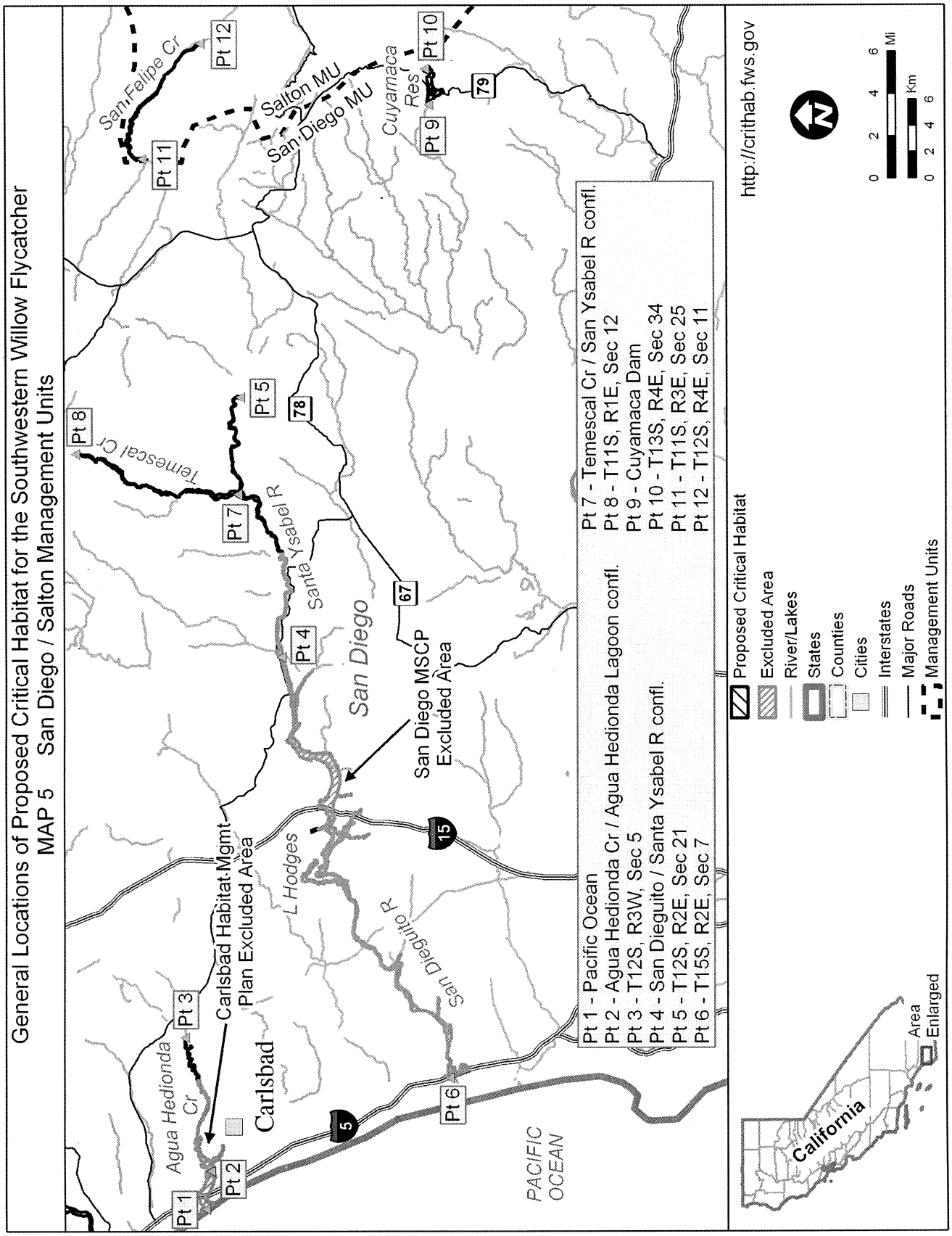


(9) San Diego/Salton Management Units.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Agua Hedionda Creek	33.1568410	−117.2250596	33.1394750	−117.3159212
Agua Hedionda Lagoon	33.1397064	−117.3159478	33.1426752	−117.3419973
Cuyamaca Reservoir	32.9898162	−116.5879651	32.9922747	−116.5634781
San Dieguito River	32.9767440	−117.2526692	33.0908002	−116.9654719
San Felipe Creek	33.1455448	−116.5456904	33.1848494	−116.6246895
Santa Ysabel River	33.1185131	−116.7874089	33.0909698	−116.9655281
emescal Creek	33.2308658	−116.8260437	33.1203488	−116.8536884

(ii) Map 5—San Diego/Salton Management Units.

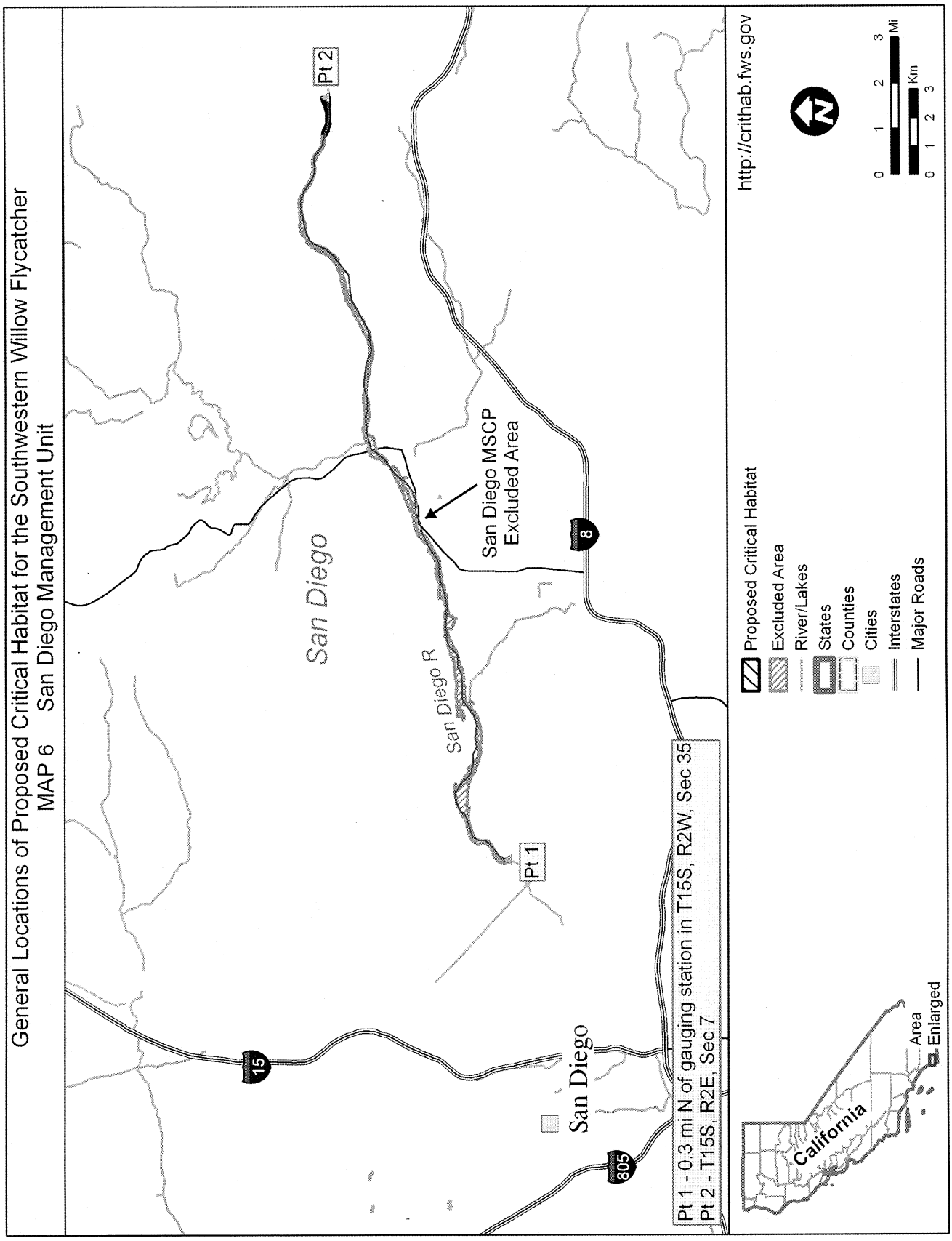


(10) San Diego Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
San Diego River	32.8847561	−116.8120723	32.8281786	−117.0527488

(ii) Map 6—San Diego Management Unit follows:

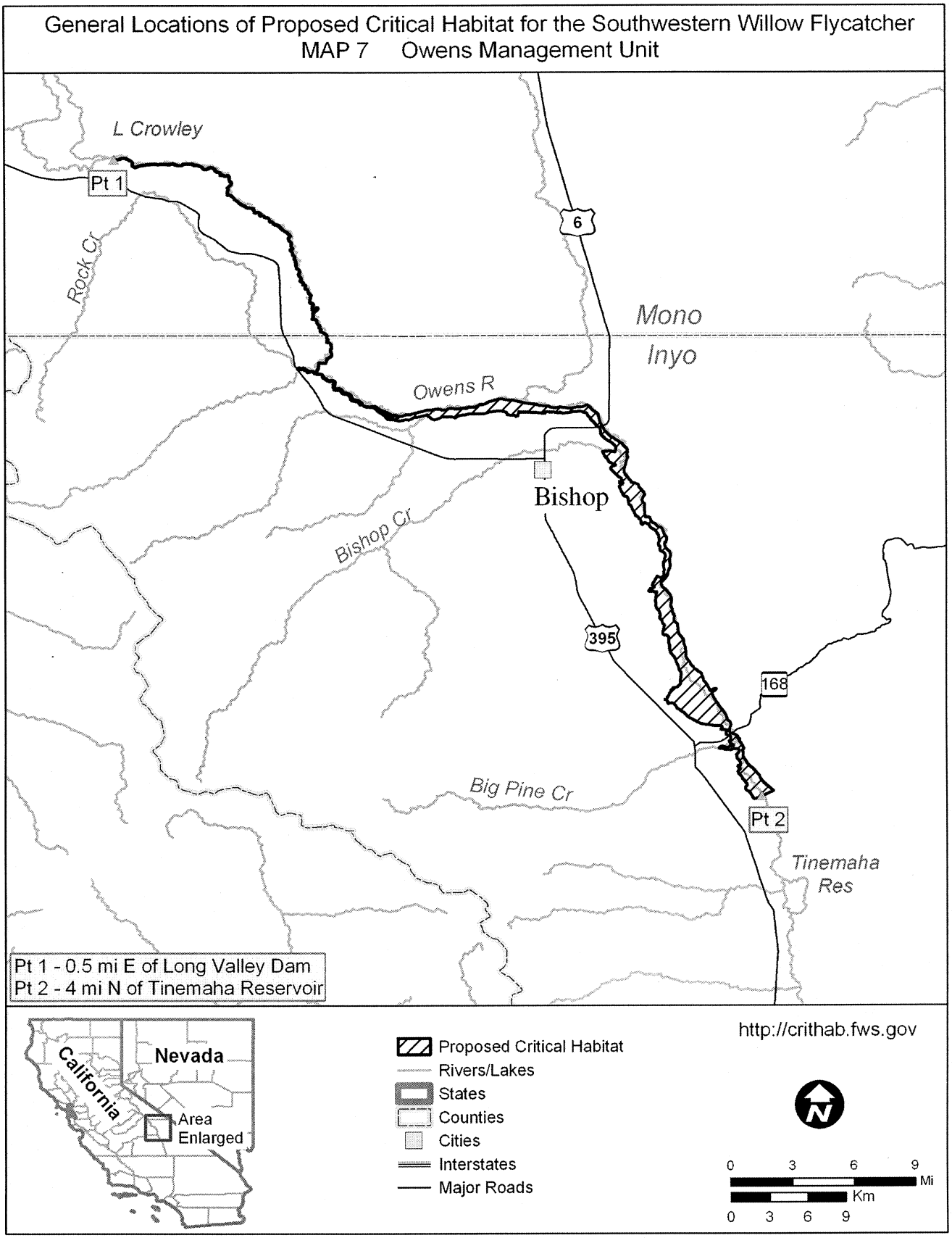


(11) Owens Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Owens River	37.5877424	−118.6992268	37.1354380	−118.2419417

(ii) Map 7—Owens Management Unit follows:

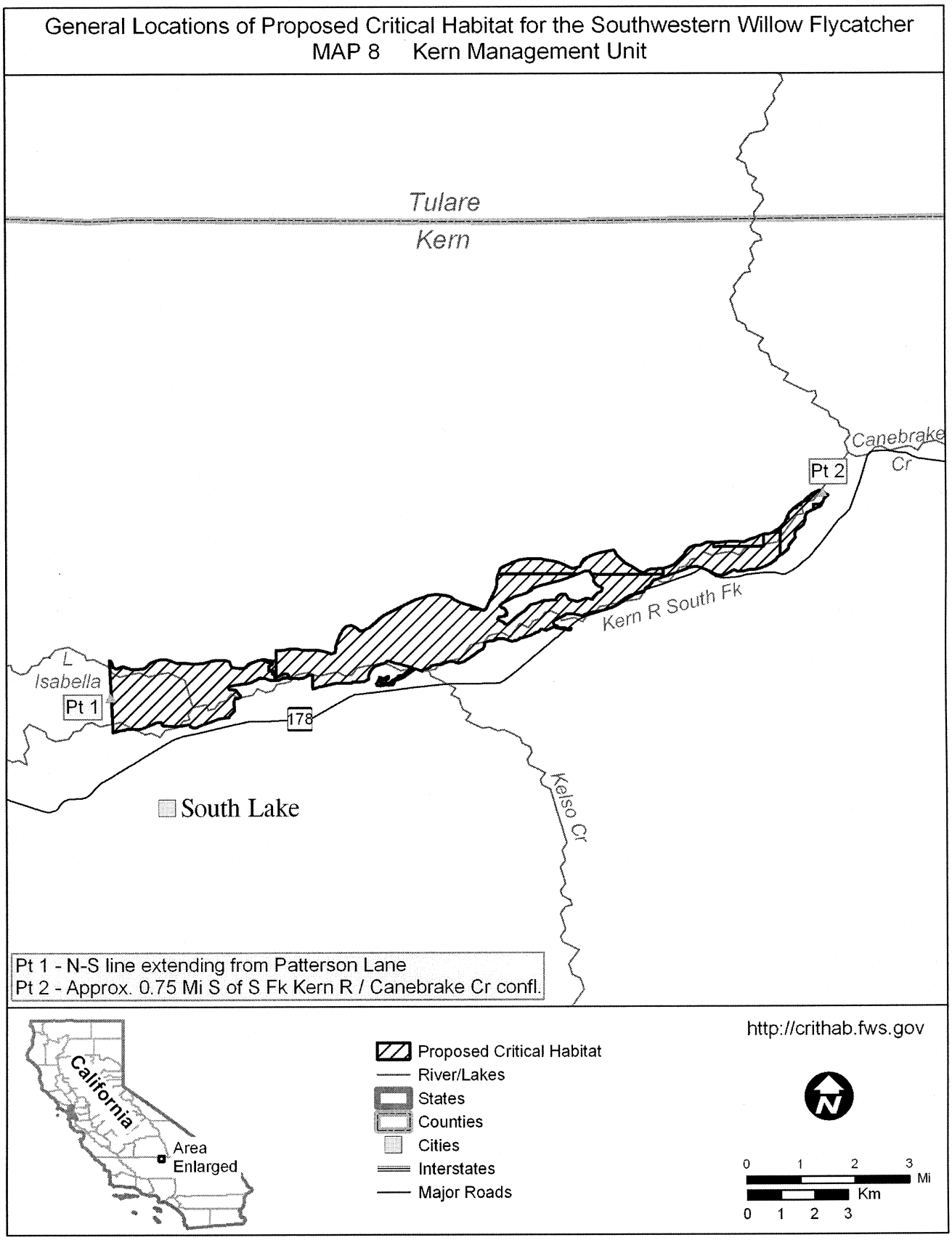


(12) Kern Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Kern River—South Fork	35.7176912	−118.1808882	35.6629518	−118.3705422

(ii) Map 8—Kern Management Unit follows:

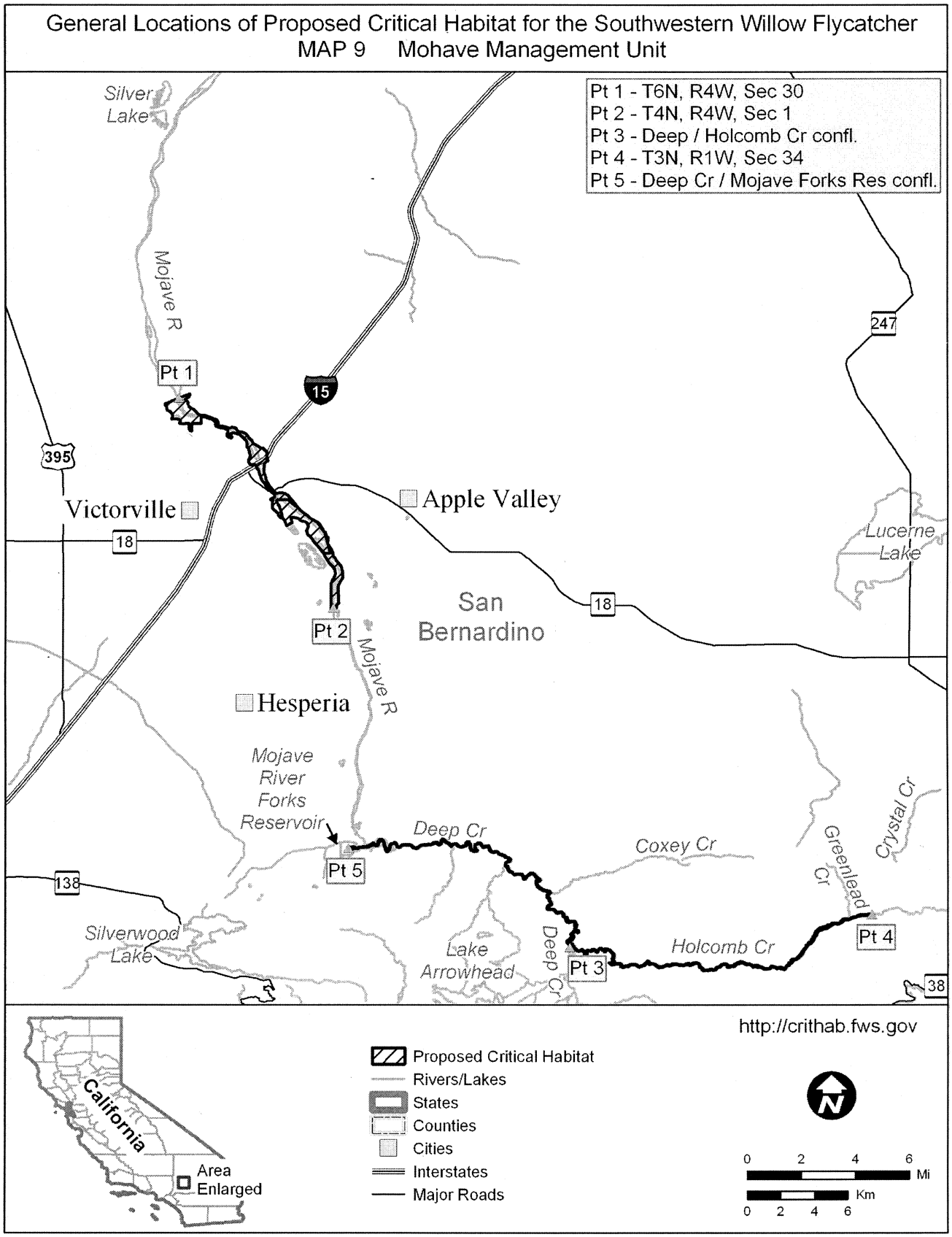


(13) Mohave Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Deep Creek	34.2871507	−117.1278400	34.3404367	−117.2465670
Holcomb Creek	34.2870806	−117.1278675	34.3049507	−116.9655144
Mojave River	34.4701947	−117.2546695	34.5838662	−117.3374023

(ii) Map 9—Mohave Management Unit follows:

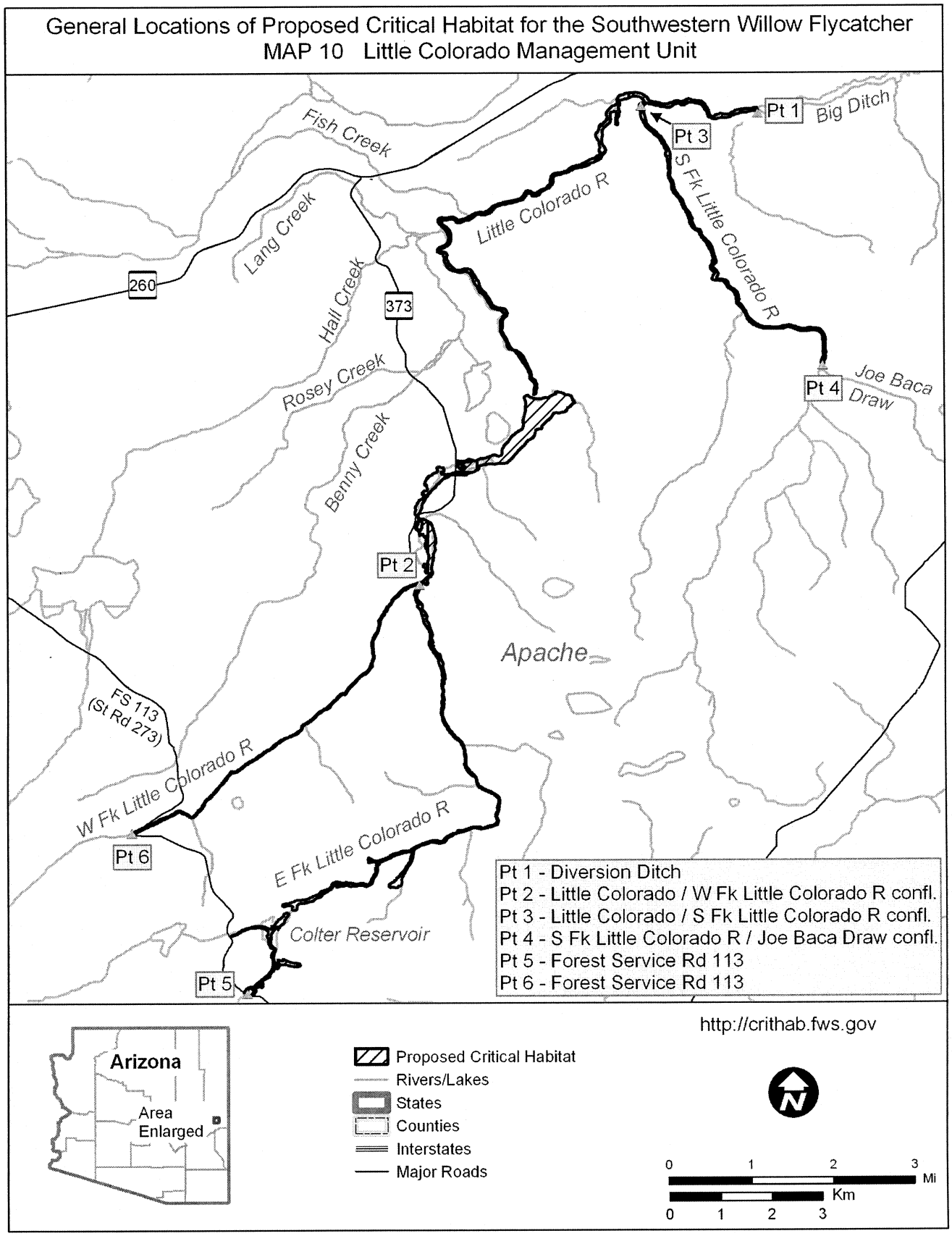


(14) Little Colorado Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Little Colorado River—East Fork	34.0035647	−109.4568366	33.9313670	−109.4872878
Little Colorado River—South Fork	34.0881263	−109.4174754	34.0423434	−109.3856370
Little Colorado River—West Fork	34.0868020	−109.3970042	33.9596767	−109.5075668

(ii) Map 10—Little Colorado Management Unit follows:

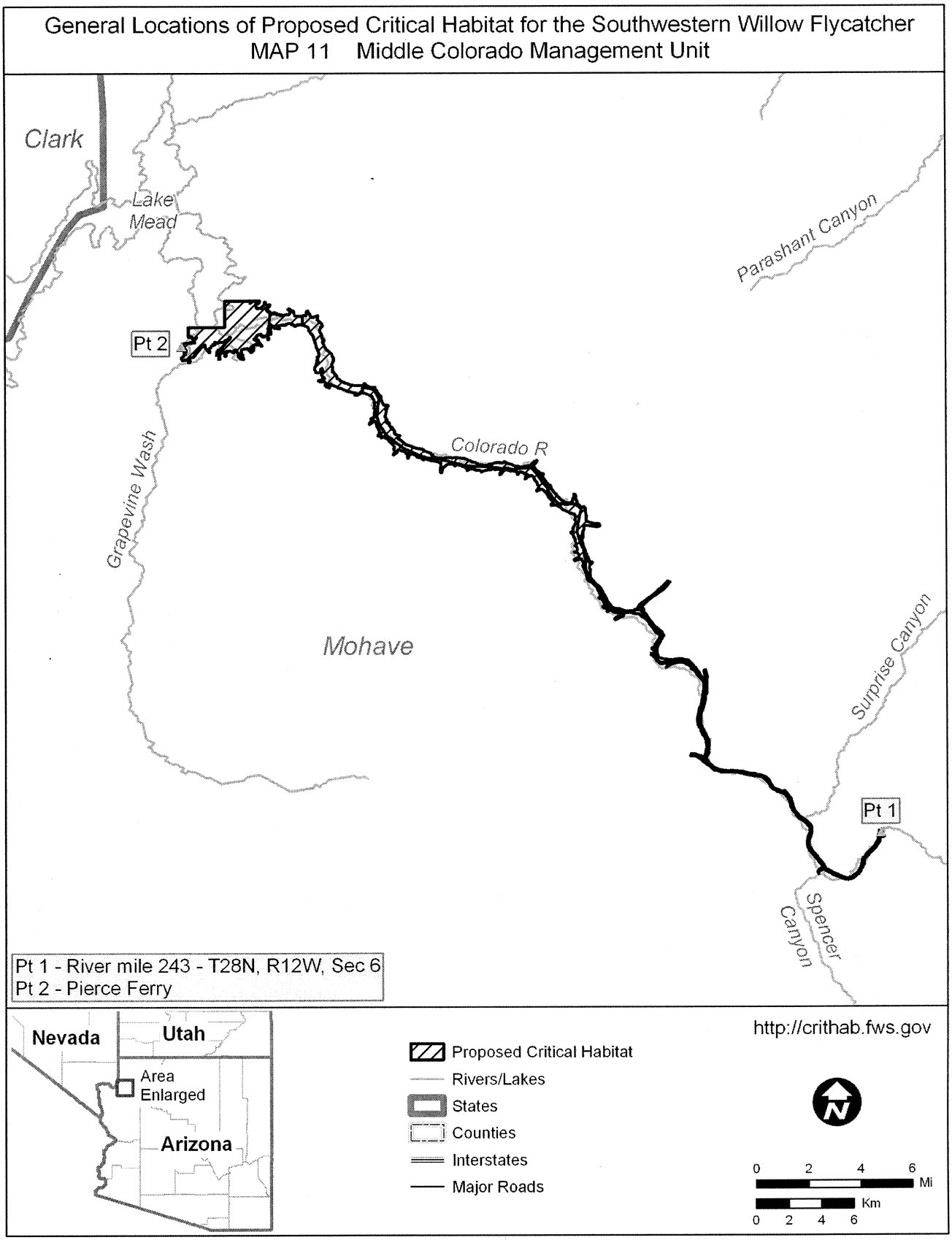


(15) Middle Colorado Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Colorado River	35.8443526	−113.6159408	36.1159593	−114.0033871

(ii) Map 11—Middle Colorado Management Unit follows:

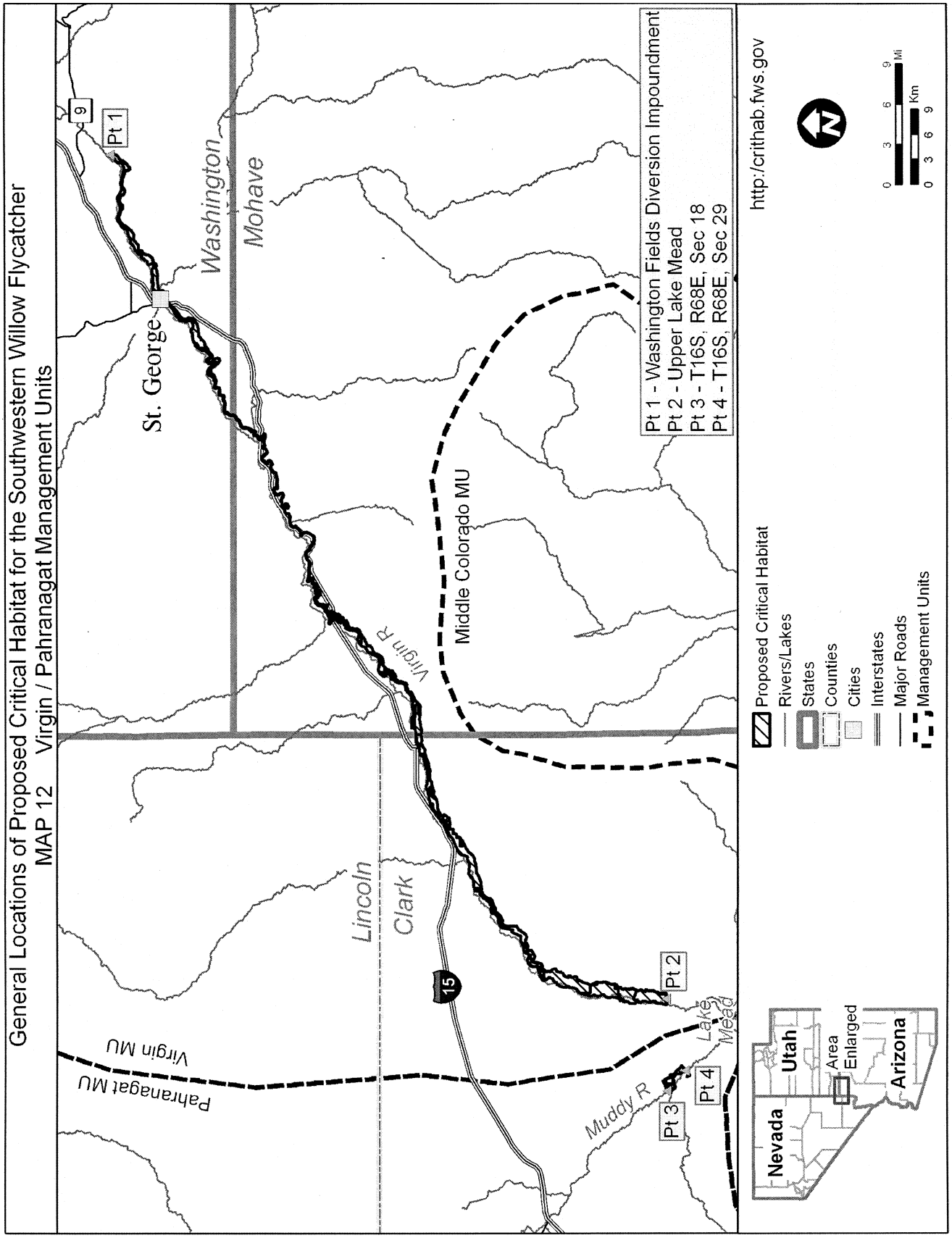


(16) Virgin/Pahranagat Management Units.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Muddy River	36.5140075	−114.4123629	36.5336836	−114.4343674
Virgin River—West	37.1329239	−113.4229921	36.5346429	−114.3354008

(ii) Map 12—Virgin/Pahranagat Management Units follows:

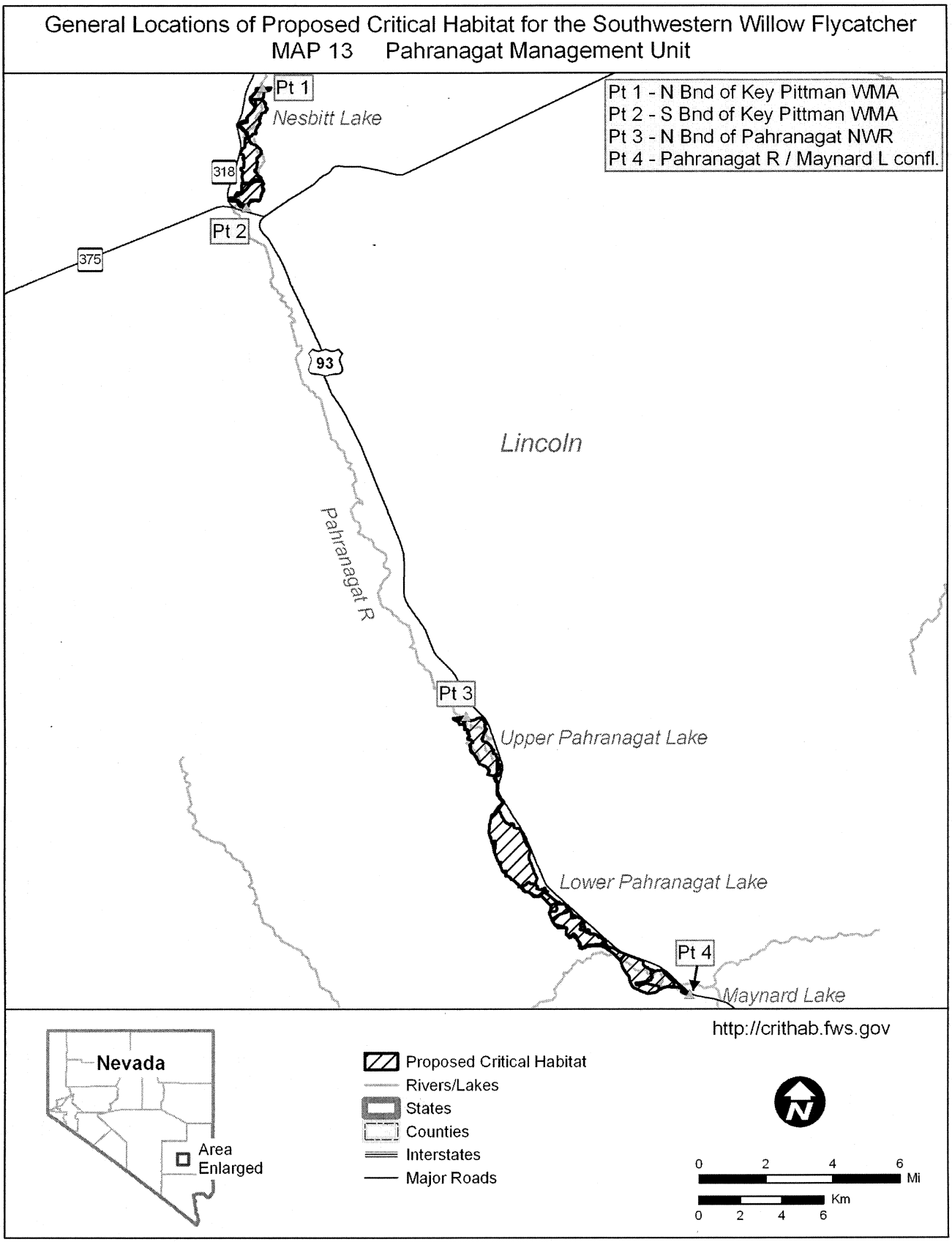


(17) Pahranagat Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Pahranagat River—Lower	37.3124639	−115.1330109	37.1922659	−115.0364699
Pahranagat River—Upper	37.5845160	−115.2202901	37.5328633	−115.2273109

(ii) Map 13—Pahranagat Management Unit follows:



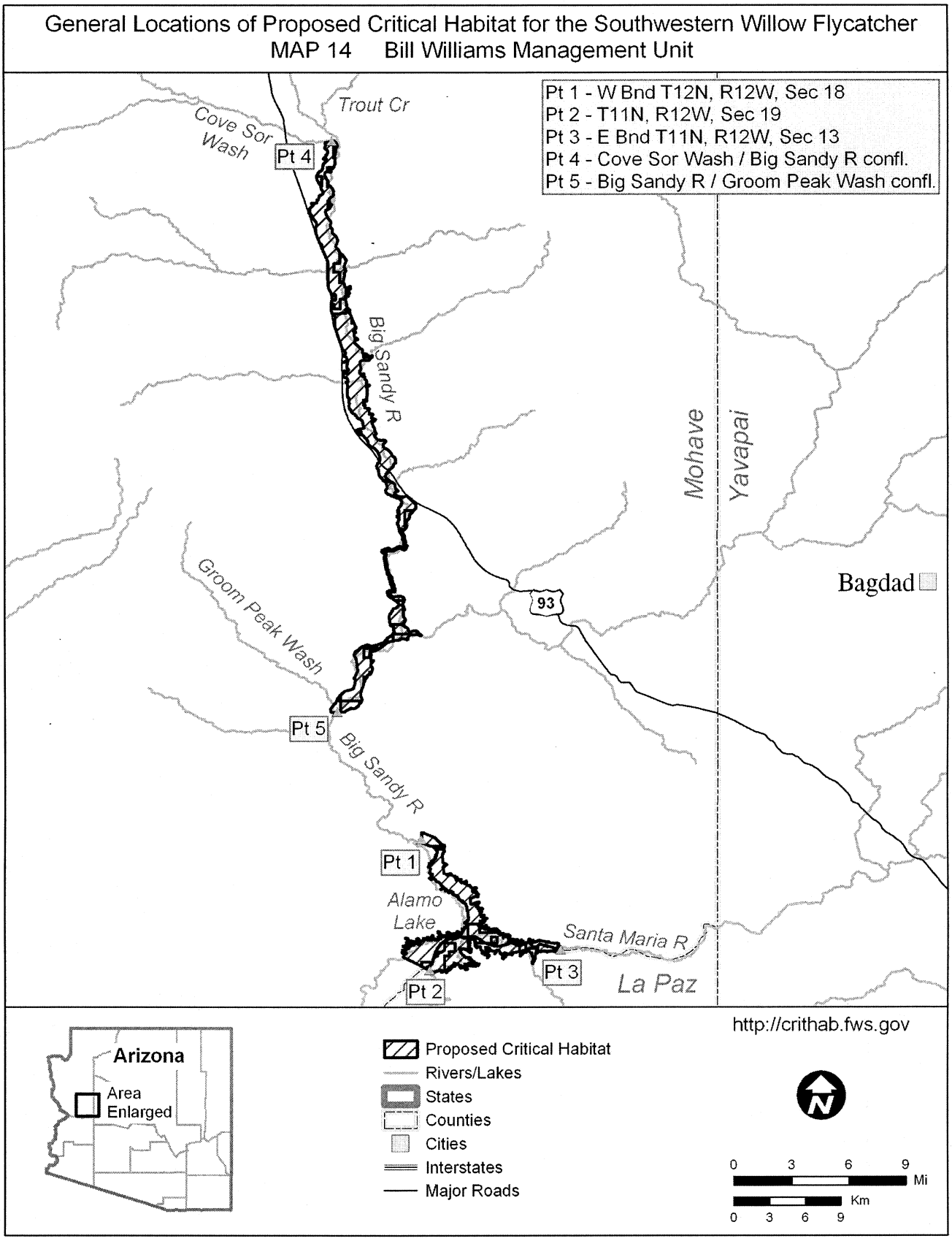
(18) Bill Williams Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Upper Alamo Lake*	34.3829524	−113.5559941	34.2842321	−113.5495648
Upper Alamo Lake*			34.2998343	−113.4512025
Upper Big Sandy River	34.4796522	−113.6186975	34.9112373	−113.6225226

* Upper Alamo Lake is a Y-shaped complex.

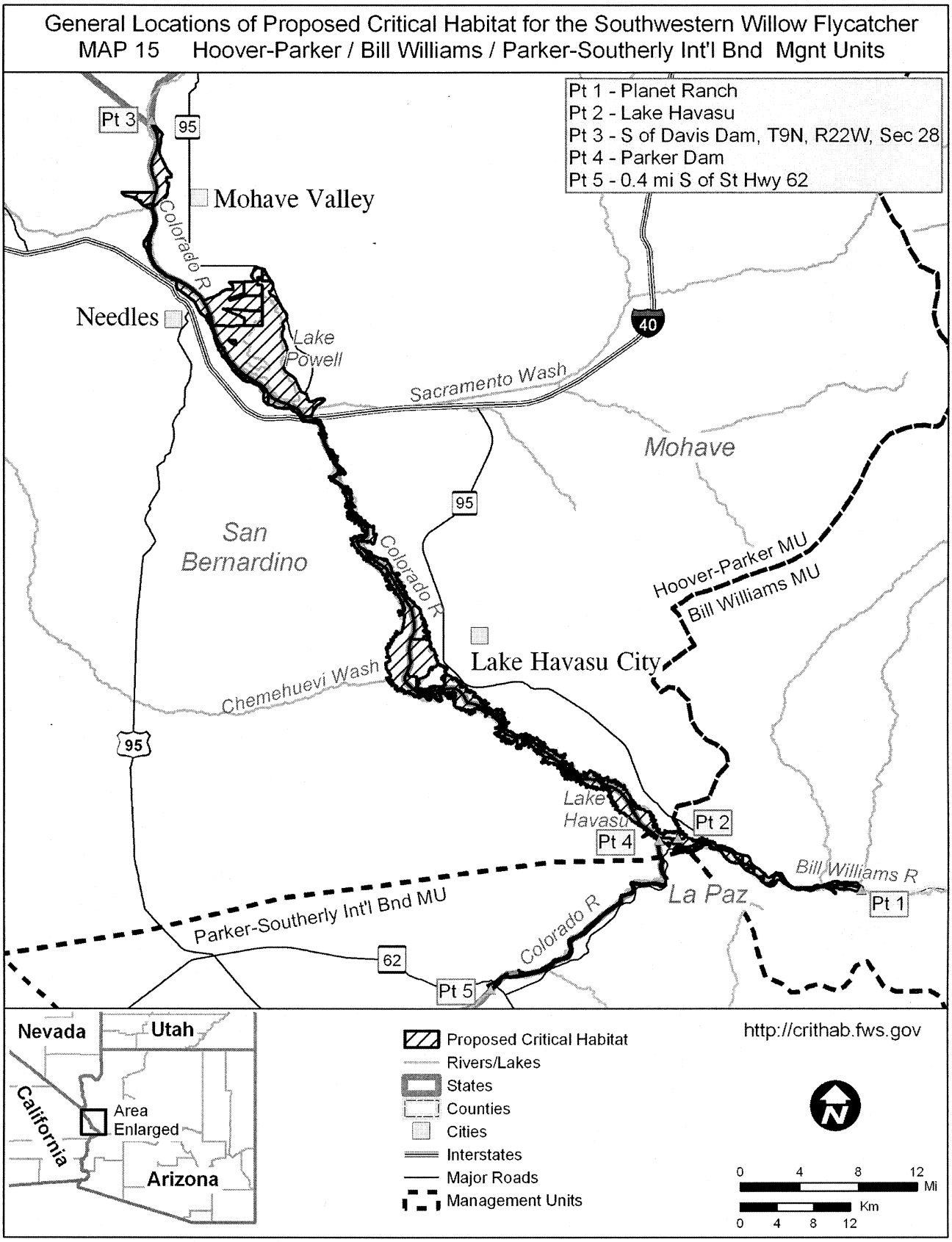
(ii) Map 14—Bill Williams Management Unit follows:


General Locations of Proposed Critical Habitat for the Southwestern Willow Flycatcher
MAP 14 Bill Williams Management Unit
Pt 1 - W Bnd T12N, R12W, Sec 18
Pt 2 - T11N, R12W, Sec 19
Pt 3 - E Bnd T11N, R12W, Sec 13
Pt 4 - Cove Sor Wash / Big Sandy R confl.
Pt 5 - Big Sandy R / Groom Peak Wash confl.
Trout Cr
Cove Sor Wash
Pt 4
Big Sandy R
Mohave
Yavapai
Bagdad
93
Groom Peak Wash
Pt 5
Big Sandy R
Pt 1
Alamo Lake
Santa Maria R
Pt 3
Pt 2
La Paz
Arizona
Area Enlarged
Proposed Critical Habitat
Rivers/Lakes
States
Counties
Cities
Interstates
Major Roads
http://crithab.fws.gov
N
0 3 6 9
Mi
Km
0 3 6 9

(19) Hoover-Parker/Bill Williams/Parker-Southerly International Boundary Management Unit. (i)

River	Start latitude	Start longitude	End latitude	End longitude
Bill Williams River	34.2526452	−113.9402190	34.3034350	−114.1201040
Lower Colorado River—North	35.0091810	−114.6338947	34.3011066	−114.1382349
Lower Colorado River—South (upper)	34.3010813	−114.1381195	34.1552145	−114.3033009

(ii) Map 15—Hoover-Parker/Bill Williams/Parker-Southerly International Boundary Management Units follows:

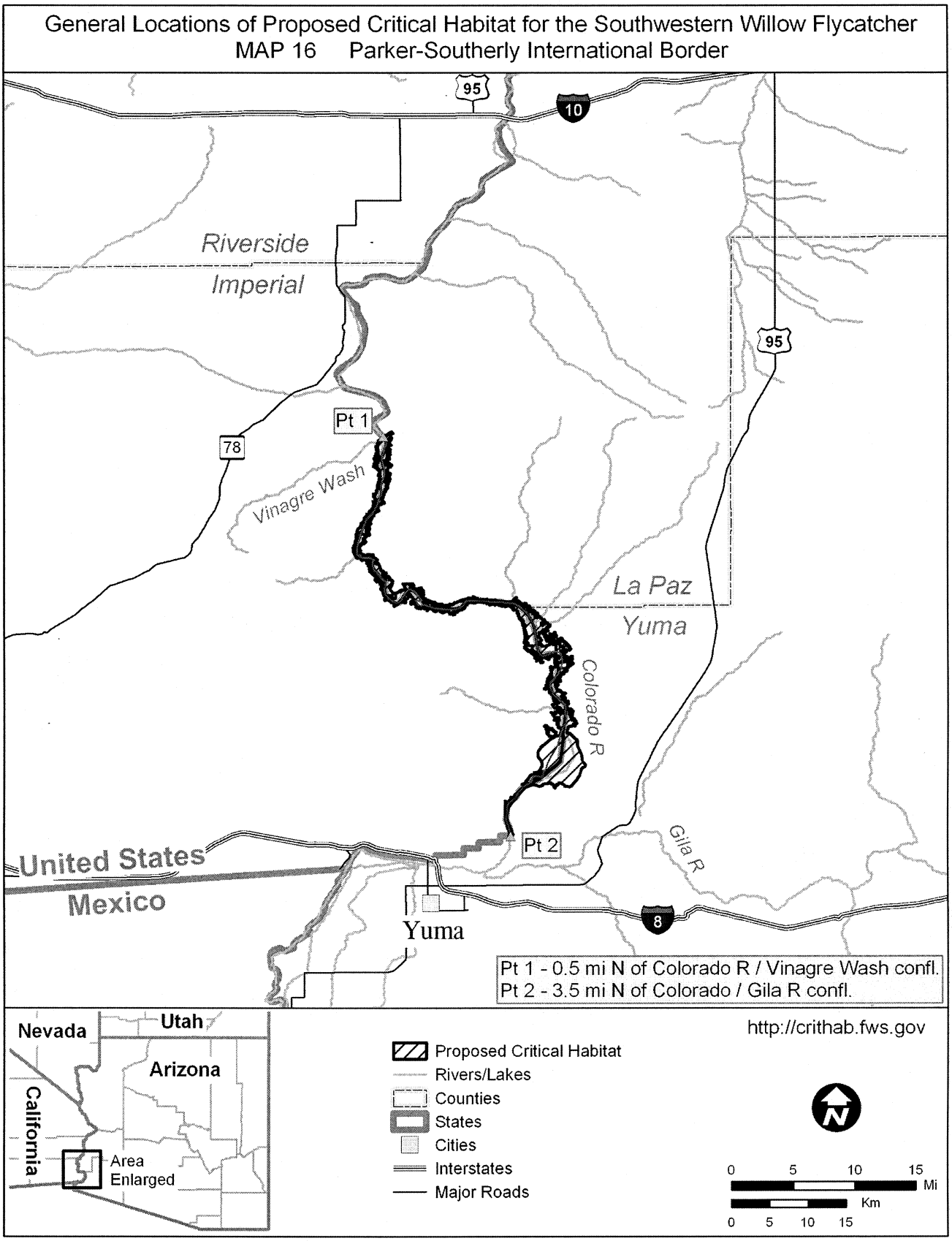


(20) Parker-Southerly International Border.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Lower Colorado River—South (lower)	33.2285723	−114.6765900	32.7561894	−114.5267206

(ii) Map 16—Parker-Southerly International Border follows:

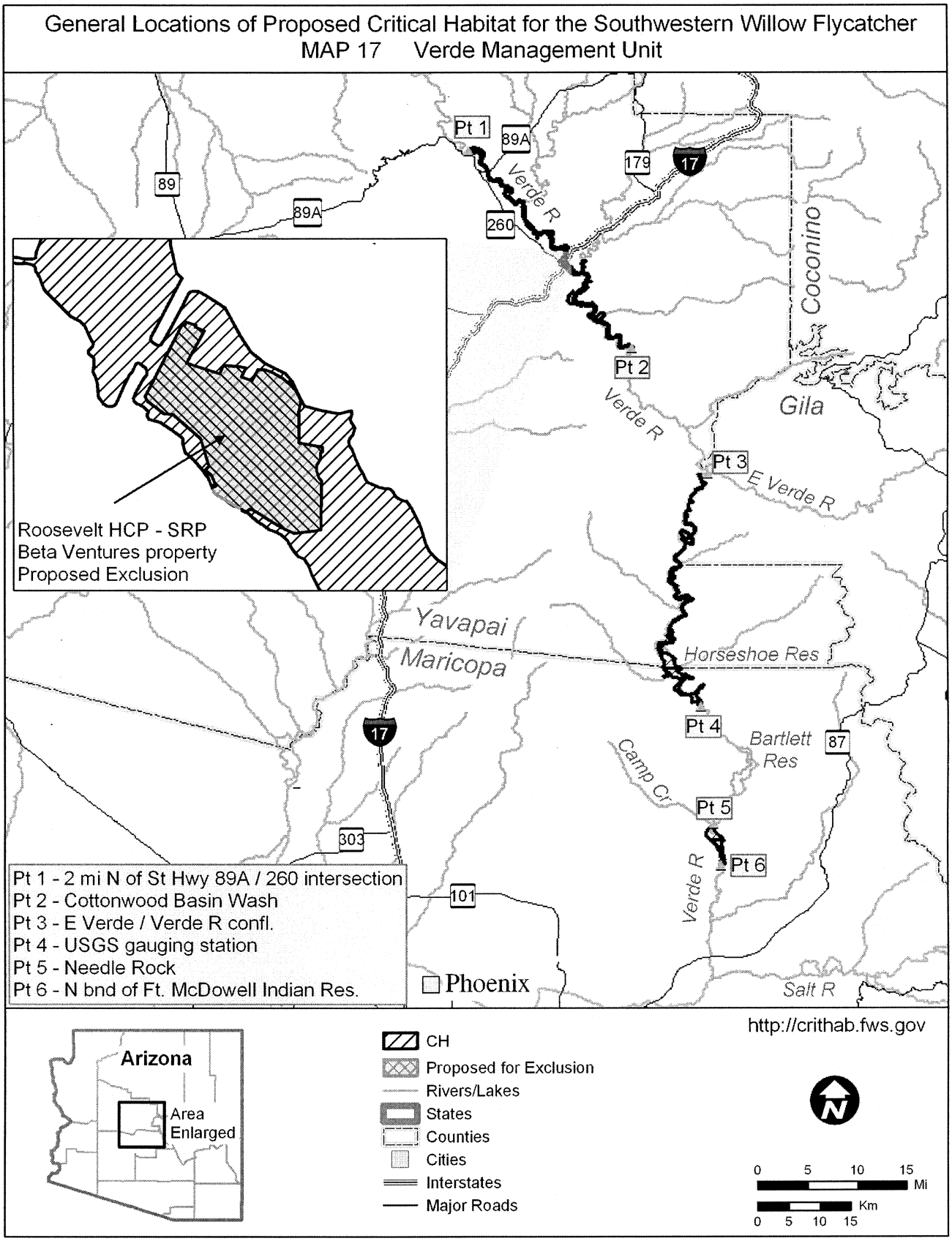


(21) Verde Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Verde—Lower	33.7743970	−111.6633289	33.7142058	−111.6531705
Verde—Middle	34.2843094	−111.6725753	33.9448968	−111.6823831
Verde—Upper	34.4659344	−111.7813345	34.7507638	−112.0175752

(ii) Map 17—Verde Management Unit follows:

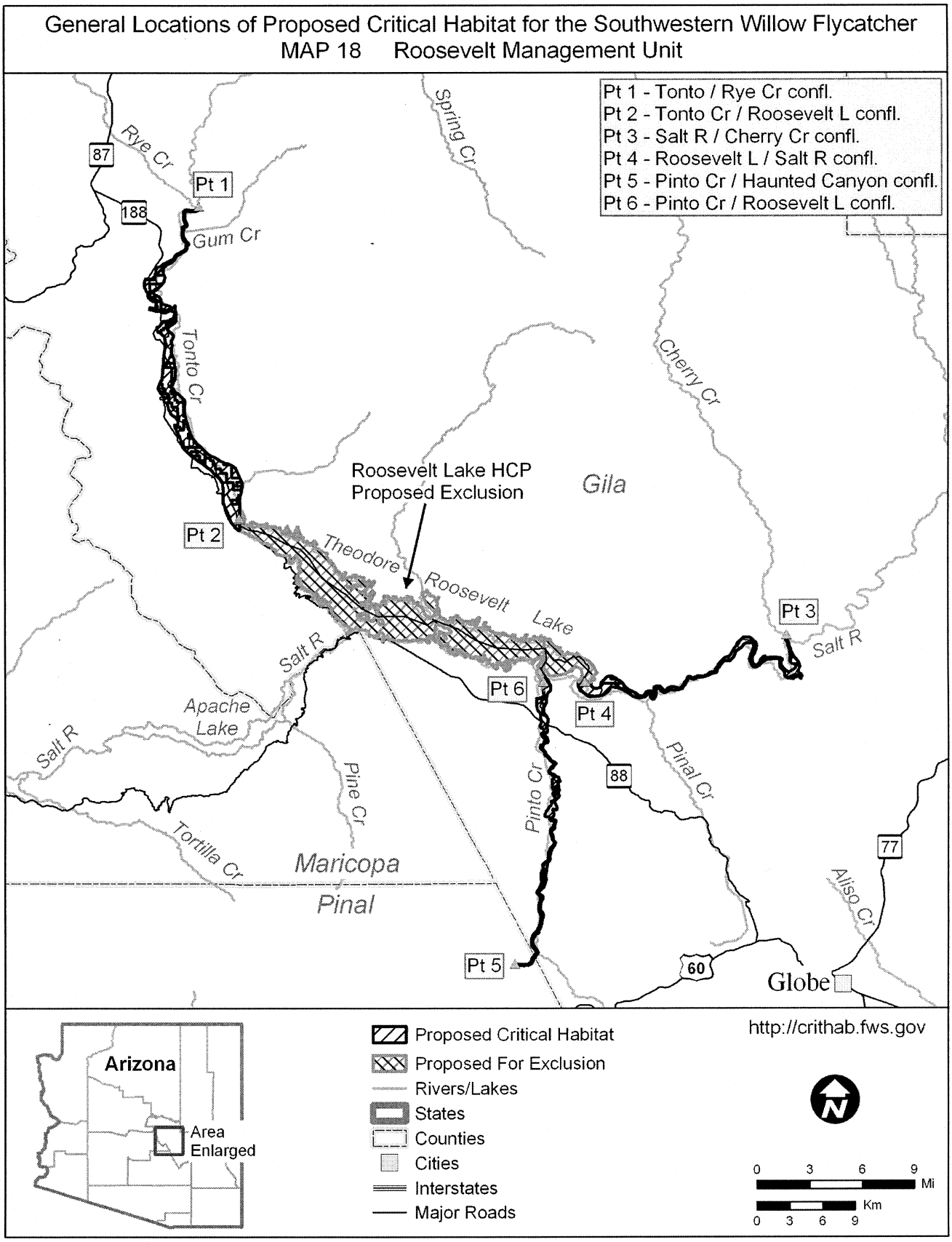


(22) Roosevelt Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Pinto Creek	33.6319457	−111.0001427	33.3993235	−111.0238060
Roosevelt Lake	33.7665032	−111.2500069	33.6318096	−110.9665008
Salt River	33.6709319	−110.8009912	33.6317484	−110.9653018
Tonto Creek	33.7672729	−111.2499979	34.0240732	−111.2823461

(ii) Map 18—Roosevelt Management Unit follows:

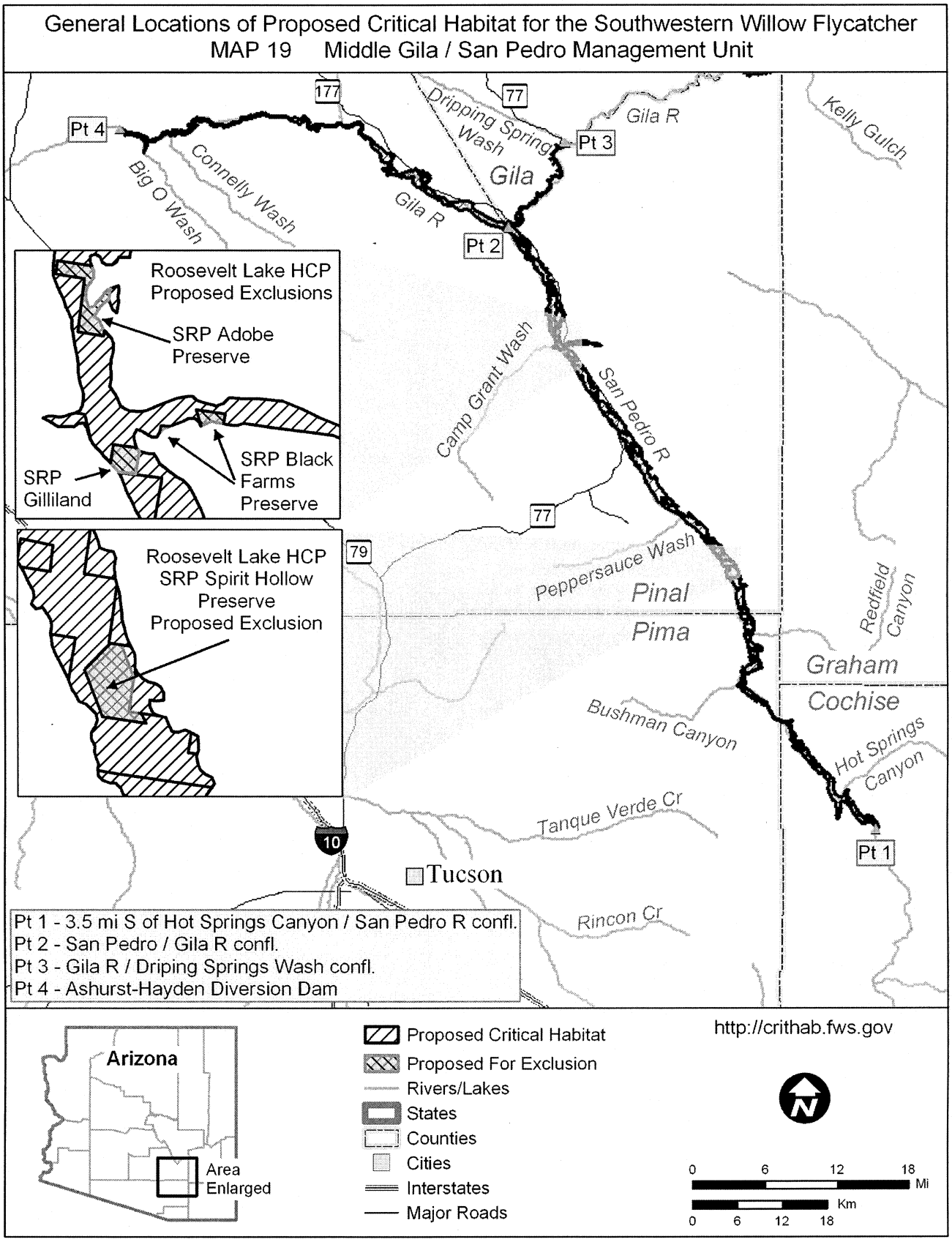


(23) Middle Gila/San Pedro Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Middle and Lower San Pedro River	32.9813209	−110.7787941	32.2524908	−110.3351882
Middle Gila River	33.0828336	−110.7093399	33.0999487	−111.2463066

(ii) Map 19—Middle Gila/San Pedro Management Unit follows:

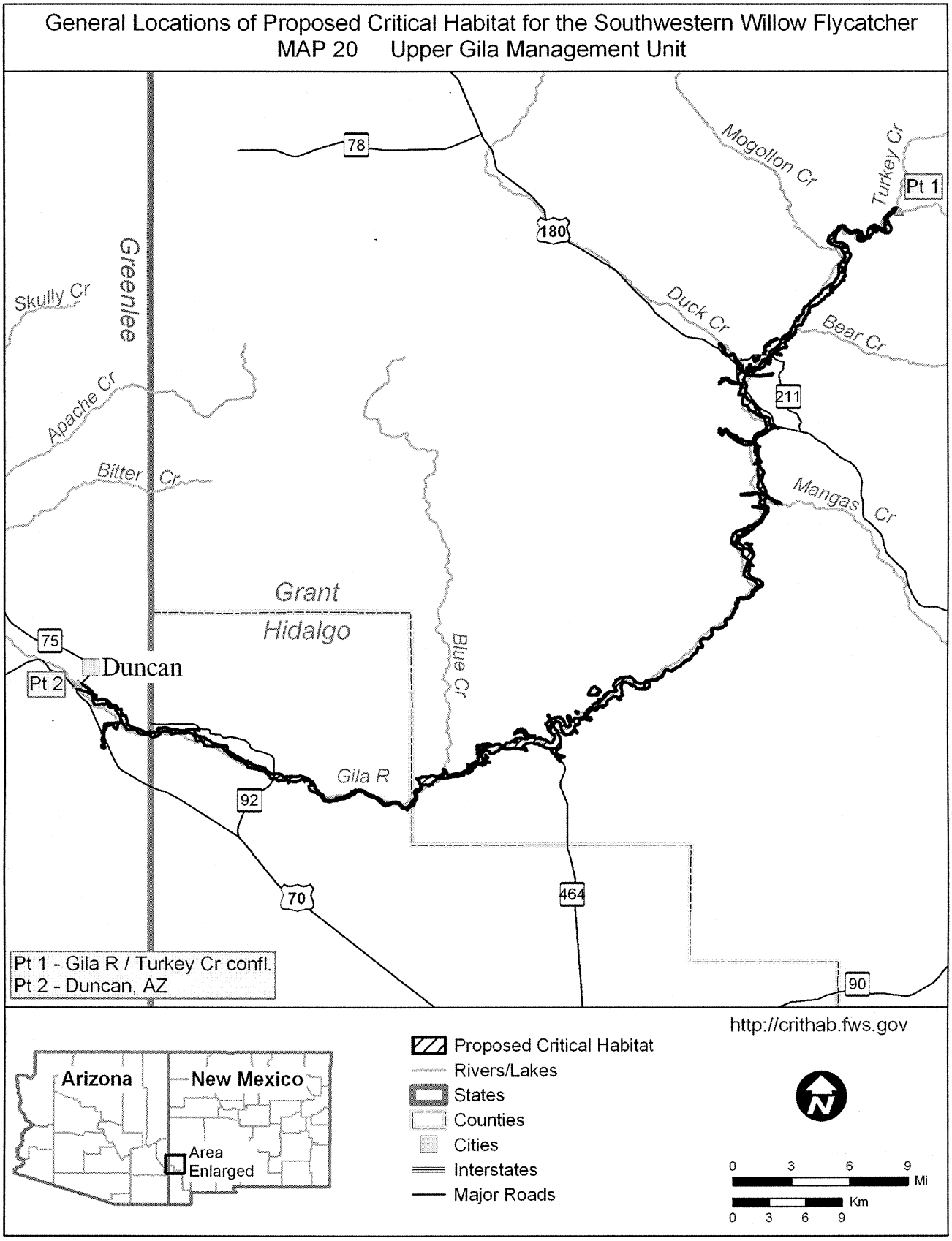


(24) Upper Gila Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Upper Gila River	33.0767407	−108.4911633	32.7238876	−109.1012460

(ii) Map 20—Upper Gila Management Unit follows:

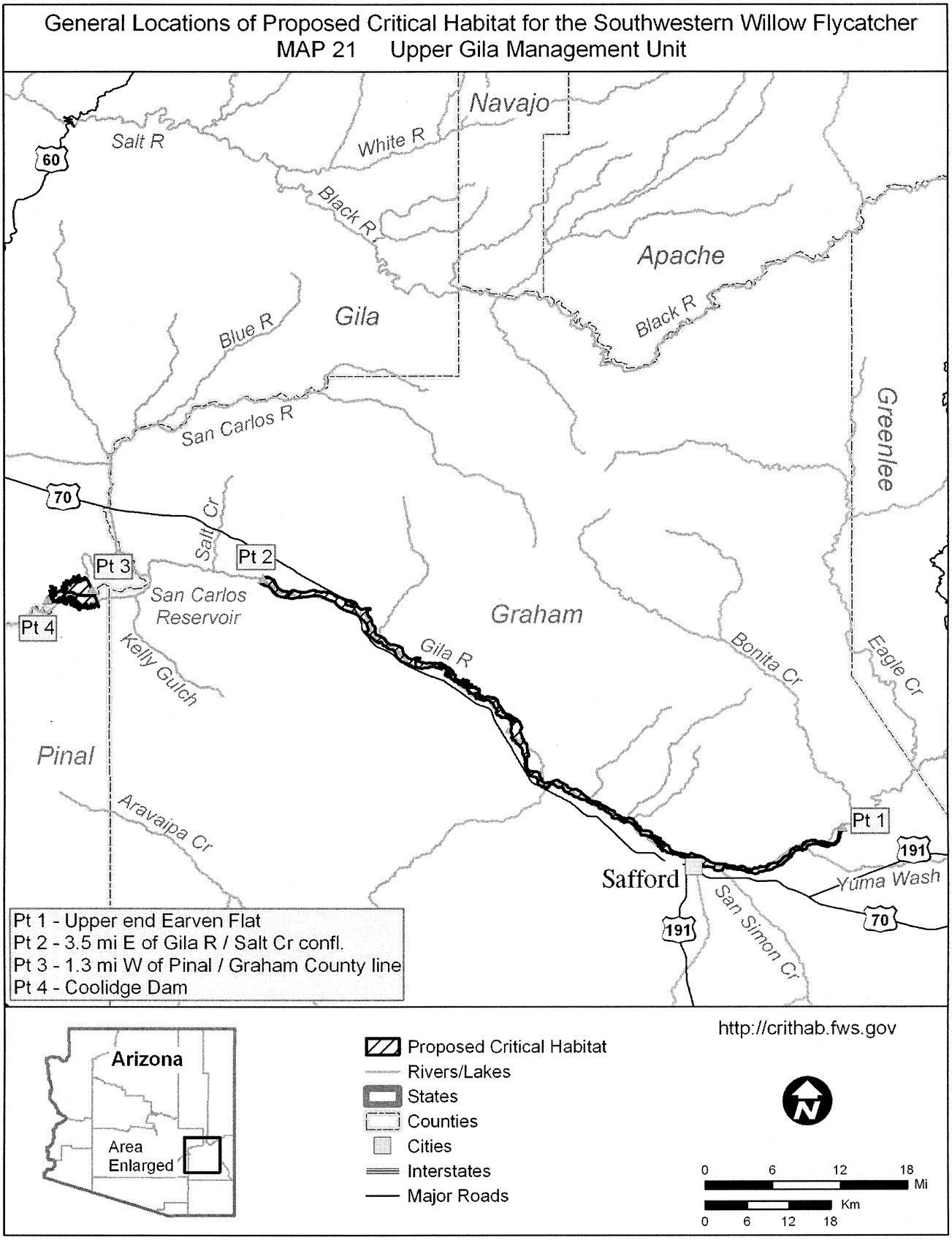


(25) Upper Gila Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Gila River—East	32.8823856	−109.5068860	33.2039473	−110.2520317
Gila River—West	33.1770897	−110.5285400	33.1894940	−110.4710587

(ii) Map 21—Upper Gila Management Unit follows:

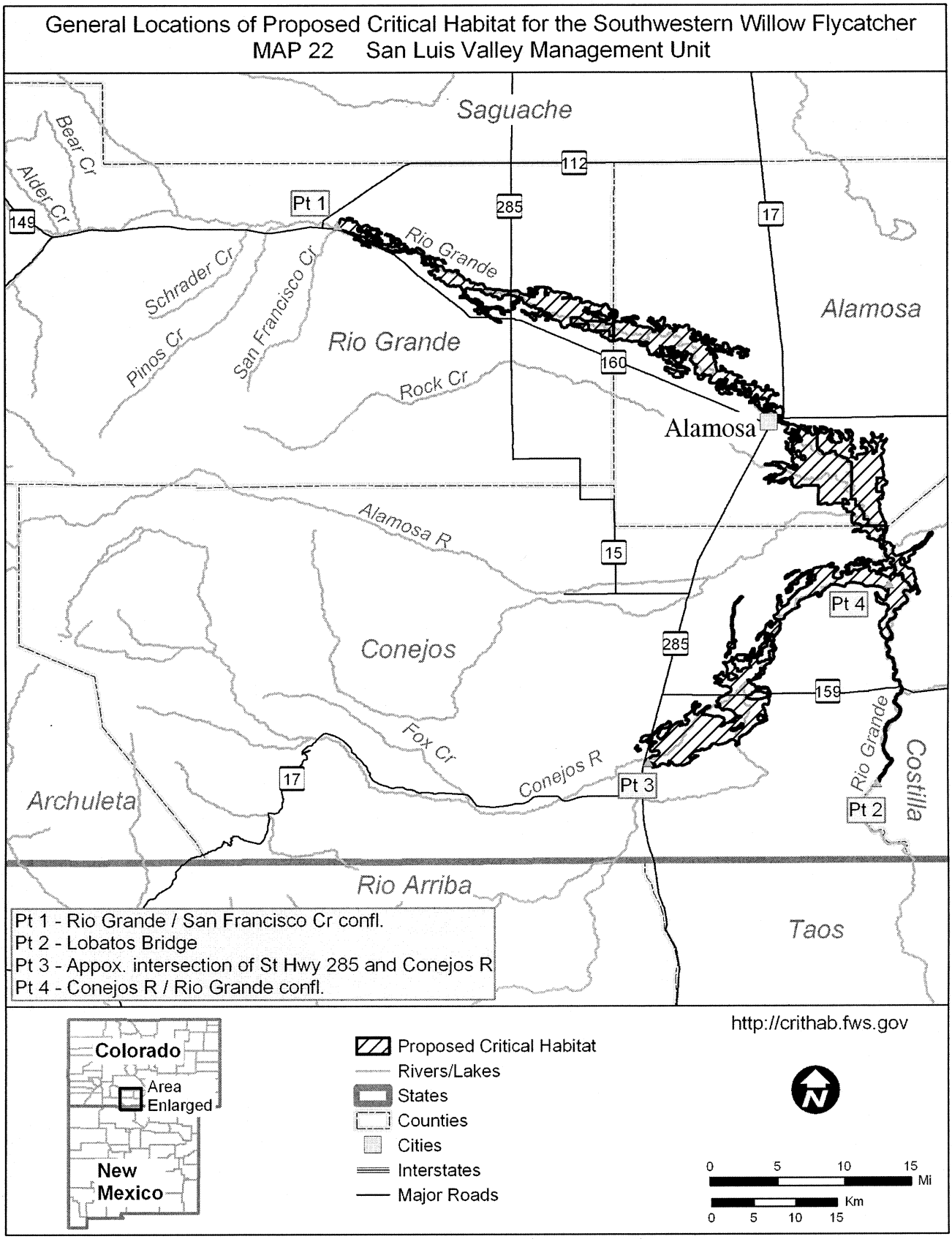


(26) San Luis Valley Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Conejos River	37.2938417	−105.7433505	37.1009161	−106.0030246
Rio Grande—Upper	37.0784038	−105.7565938	37.6808883	−106.3352071

(ii) Map 22—San Luis Valley Management Unit follows:

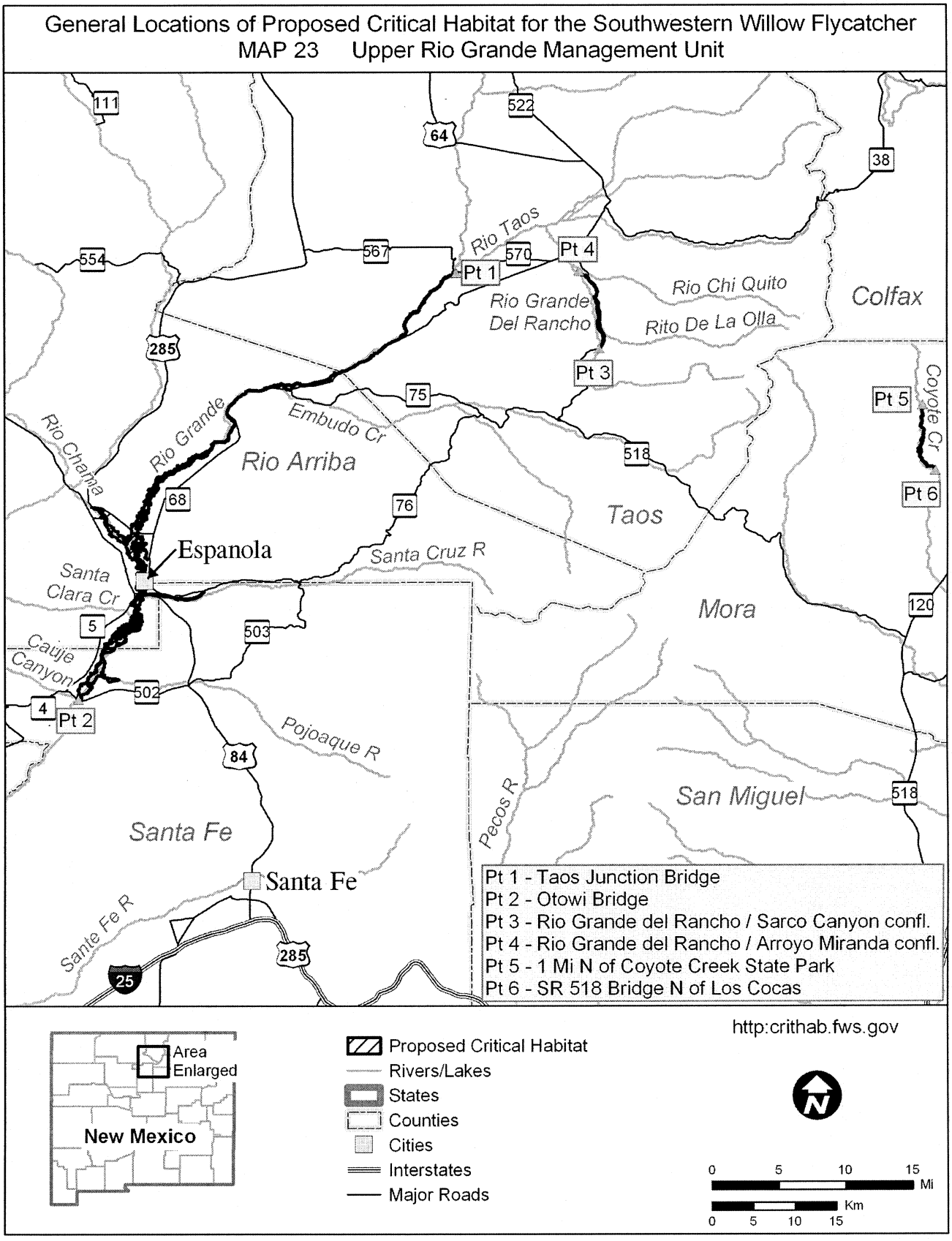


(27) Upper Rio Grande Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Coyote Creek	36.1939559	−105.2308813	36.1229132	−105.2175662
Rio Grande—Middle	35.8746413	−106.1405919	36.3361484	−105.7338054
Rio Grande del Rancho	36.2547823	−105.5796721	36.3386111	−105.6010574

(ii) Map 23—Upper Rio Grande Management Unit follows:

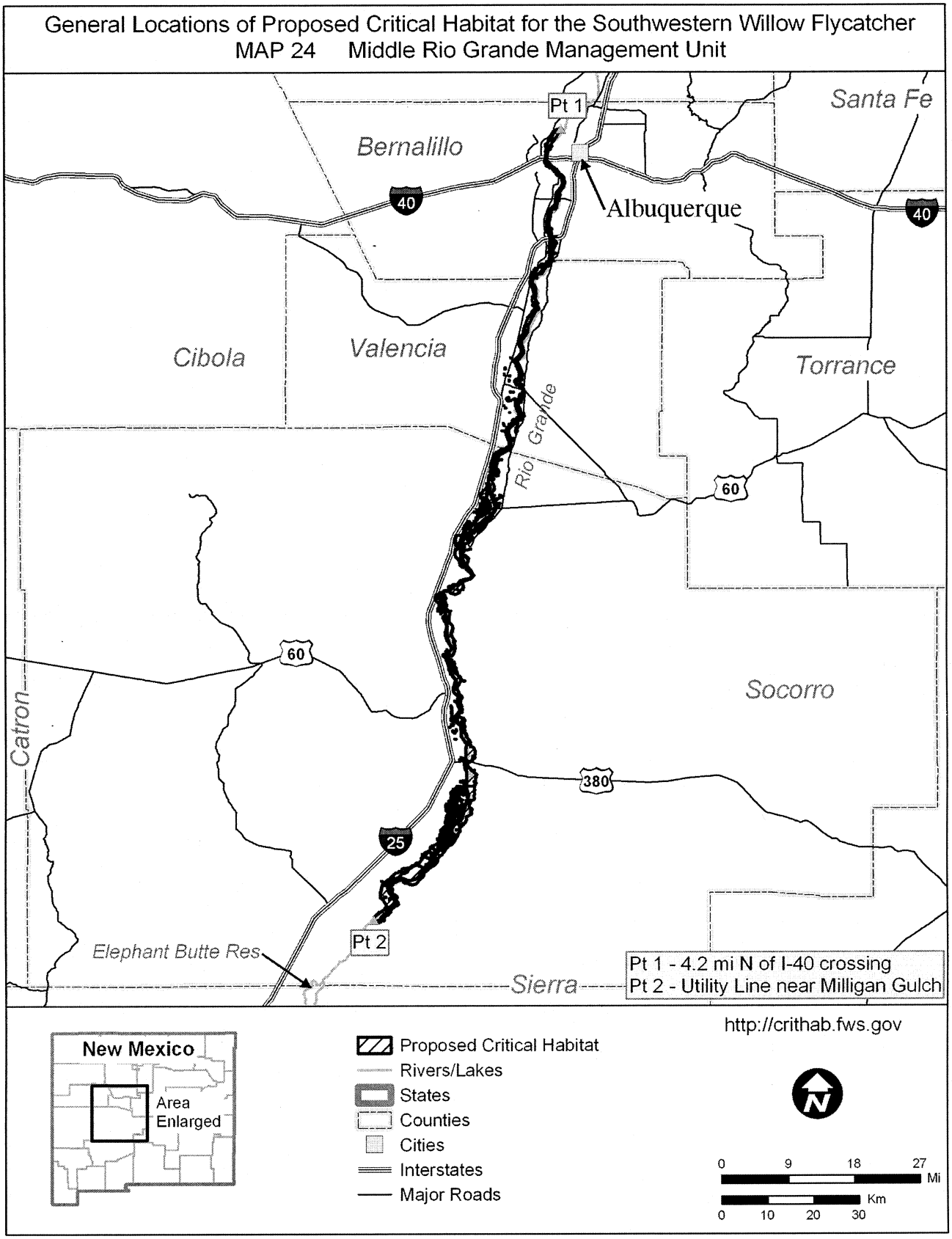


(28) Middle Rio Grande Management Unit.

(i)

River	Start latitude	Start longitude	End latitude	End longitude
Rio Grande—Lower	33.6064073	−107.0328265	35.1641318	−106.6627928

(ii) Map 24—Middle Rio Grande Management Unit follows:


General Locations of Proposed Critical Habitat for the Southwestern Willow Flycatcher
MAP 24 Middle Rio Grande Management Unit
Pt 1
Santa Fe
Bernalillo
40
Albuquerque
40
Cibola
Valencia
Torrance
Rio Grande
60
60
Socorro
Catron
380
25
Pt 2
Elephant Butte Res
Sierra
Pt 1 - 4.2 mi N of I-40 crossing
Pt 2 - Utility Line near Milligan Gulch
http://crithab.fws.gov
New Mexico
Area Enlarged
Proposed Critical Habitat
Rivers/Lakes
States
Counties
Cities
Interstates
Major Roads
N
0 9 18 27 Mi
0 10 20 30 Km

Dated: September 30, 2004.

Julie MacDonald,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–22394 Filed 10–8–04; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
October 12, 2004

Part III

The President

Proclamation 7827—German-American Day, 2004

Federal Register
Vol. 69, No. 196
Tuesday, October 12, 2004

Presidential Documents

Title 3—

The President

Proclamation 7827 of October 6, 2004

German-American Day, 2004

By the President of the United States of America

A Proclamation

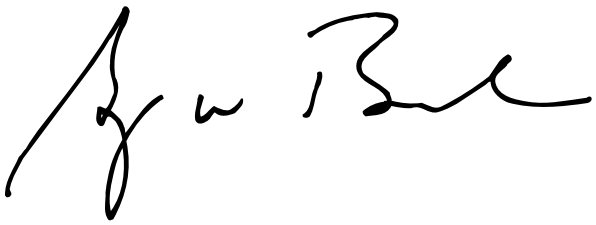
Generations of German immigrants and their descendents have helped build America and chart its course through history. On German-American Day, we recognize these proud citizens for their important contributions to America and honor the bond between two great nations.

German Americans have been part of America's history since its earliest days, beginning with the establishment of the Jamestown Colony in 1607 and the arrival of German Quakers and Mennonite families in 1683. Many of these early settlers came to America seeking religious freedom and the chance to develop a community based on tolerance and respect for all people. During the westward expansion of the United States, many German families helped settle communities, found cities, and develop the agriculture industry. Over time, the core beliefs of these freedom-loving individuals helped define the liberty and opportunity that our country represents. Their traditions of public debate and active citizenship influenced important social issues such as land reform, abolition, workers' rights, and women's suffrage.

This week, our Government is breaking ground for a new Embassy in historic Berlin, exemplifying America's support of a unified Germany. Sharing a common commitment to freedom, peace, and prosperity, the citizens of Germany and America can build a better future for the benefit of all nations.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 6, 2004, as German-American Day, and I encourage all Americans to recognize the contributions of our citizens of German descent.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 04–22986
Filed 10–08–04; 9:12 am]
Billing code 3195–01–P

Federal Register

Tuesday,
October 12, 2004

Part IV

The President

Proclamation 7828—Leif Erikson Day, 2004

Federal Register
Vol. 69, No. 196
Tuesday, October 12, 2004

Presidential Documents

Title 3—

The President

Proclamation 7828 of October 7, 2004

Leif Erikson Day, 2004

By the President of the United States of America

A Proclamation

More than 1,000 years ago, Leif Erikson led his crew on a journey across the Atlantic, becoming the first European known to have set foot on North American soil. Every October, we honor this courageous Viking explorer, his historic voyage, and the rich heritage of Nordic Americans.

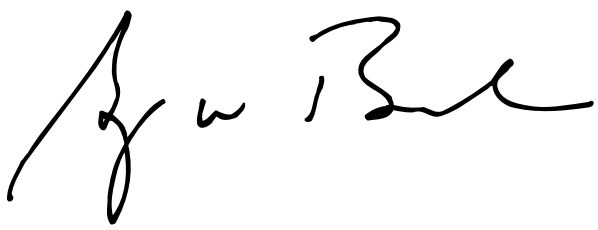
Immigrants from Denmark, Finland, Iceland, Norway, and Sweden and their descendants have made great contributions to our Nation in the fields of business, politics, the arts, education, agriculture, and other areas. Nordic Americans have also made a significant mark on our country's society and culture, and have helped to establish and define America's most cherished principles. Their energy and spirit have inspired others, and their courage, skill, and determination have played an important role in the development of our country. Today, millions of people in the United States trace their origins to these Nordic countries, and their contributions to America make our country stronger and better.

On this day, we also recognize our longstanding ties to these nations that were home to the ancestors of many Americans. Together, we continue to work to advance prosperity, expand freedom, and increase stability and security in Europe and elsewhere in the world.

To honor Leif Erikson, the courageous son of Iceland and grandson of Norway, and to celebrate our citizens of Nordic-American heritage, the Congress, by joint resolution (Public Law 88–566) approved on September 2, 1964, has authorized and requested the President to proclaim October 9 of each year as ''Leif Erikson Day.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 9, 2004, as Leif Erikson Day. I call upon all Americans to observe this day with appropriate ceremonies, activities, and programs to honor our rich Nordic-American heritage.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 04–23012
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Billing code 3195–01–P

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Federal Register

Vol. 69, No. 196

Tuesday, October 12, 2004

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 12, 2004

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric loans:

Electricity System Emergency Restoration Plan; published 10-12-04

COMMERCE DEPARTMENT

Economic Analysis Bureau

International services surveys:

BE-22; annual survey of selected services transactions with unaffiliated foreign persons; published 9-10-04

COMMERCE DEPARTMENT

Industry and Security Bureau

Export administration regulations:

Nomenclature change; published 10-12-04

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Indiana; published 8-26-04

South Carolina; published 8-10-04

Solid waste:

Hazardous waste; identification and listing—

Exclusions; published 10-12-04

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; published 8-10-04

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Interconnection—

Fiber networks serving multiple dwelling units; incumbent local exchange carriers unbundling obligations; published 9-9-04

Satellite communications—

Orbital debris mitigation; published 9-9-04

Radio stations; table of assignments:

New York and Vermont; published 9-13-04

FEDERAL RESERVE SYSTEM

Practice and procedure:

Civil money penalty; inflation adjustment; published 9-23-04

FEDERAL TRADE COMMISSION

Appliances, consumer; energy consumption and water use information in labeling and advertising:

Comparability ranges—

Storage-type, gas-fired instantaneous, and heat pump water heaters; published 7-14-04

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Sponsor name and address changes—

Phoenix Scientific, Inc.; published 10-12-04

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

Louisiana; published 10-12-04

TRANSPORTATION DEPARTMENT

Organization, functions, and authority delegations:

Transportation Deputy Secretary et al.; published 10-12-04

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Bombardier; published 9-7-04

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Child restraint systems—

Anchorage systems; published 10-12-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

AGRICULTURE DEPARTMENT

Forest Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Wildlife; 2005-2006 subsistence taking; comments due by 10-22-04; published 8-31-04 [FR 04-19839]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Foreign inspection system supervisory visits to certified foreign establishments; frequency; comments due by 10-18-04; published 8-18-04 [FR 04-18889]

COMMERCE DEPARTMENT

Economic Analysis Bureau

Direct investment surveys:

BE-10; benchmark survey of U.S. direct investment abroad (2004); comments due by 10-18-04; published 8-17-04 [FR 04-18640]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Salmonids in California; listing determinations; hearings; comments due by 10-20-04; published 9-9-04 [FR 04-20425]

West Coast Salmonids; extention of comment period and public hearing; comments due by 10-20-04; published 8-31-04 [FR 04-19867]

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Gulf of Alaska pollock and Pacific cod; comments due by 10-21-04; published 9-21-04 [FR 04-21217]

Atlantic highly migratory species—

Atlantic shark; comments due by 10-18-04; published 9-22-04 [FR 04-21289]

Large and small coastal sharks; comments due by 10-18-04; published 9-17-04 [FR 04-21002]

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 10-21-04; published 9-21-04 [FR 04-20888]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Bid bonds; powers of attorney; comments due by 10-22-04; published 8-23-04 [FR 04-19234]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:

Energy conservation standards—-

Commercial packaged boilers; test procedures and efficiency standards; Open for comments until further notice; published 12-30-99 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Stratospheric ozone protection—

Methyl bromide phaseout; critical use exemption process; comments due by 10-21-04; published 9-20-04 [FR 04-21053]

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 10-21-04; published 9-21-04 [FR 04-21179]

Colorado; comments due by 10-18-04; published 9-16-04 [FR 04-20793]

North Carolina; comments due by 10-20-04;

OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States
Generalized System of Preferences:
2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 10-18-04; published 9-3-04 [FR 04-20124]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 10-18-04; published 9-22-04 [FR 04-21273]
Eurocopter France; comments due by 10-18-04; published 8-19-04 [FR 04-18438]
McDonnell Douglas; comments due by 10-18-04; published 9-3-04 [FR 04-20123]
Pratt & Whitney; comments due by 10-18-04; published 8-18-04 [FR 04-18919]
Airworthiness standards:
Special conditions—
Cessna 206H and T206H airplanes; comments due by 10-21-04; published 9-21-04 [FR 04-21138]
Dassault Model Mystere-Falcon and Model Fan Jet Falcon airplanes; various series; comments due by 10-22-04; published 9-22-04 [FR 04-21224]
Lockheed Martin Corp. Model 1329-23A, -23D, -23E, and 1329-25 airplanes; comments due by 10-22-04; published 9-22-04 [FR 04-21225]
Colored Federal airways; comments due by 10-18-04; published 9-3-04 [FR 04-20175]

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Right-of-way and environment:
Highway traffic and construction noise; abatement procedures; comments due by 10-19-04; published 8-20-04 [FR 04-18850]

TREASURY DEPARTMENT
Comptroller of the Currency
Economic Growth and Regulatory Paperwork Reduction Act of 1996; implementation:
Burden reduction recommendations; comments due by 10-18-04; published 7-20-04 [FR 04-16401]

TREASURY DEPARTMENT
Internal Revenue Service
Estate and gift taxes:
Qualified interests; comments due by 10-21-04; published 7-26-04 [FR 04-16593]
Income taxes:
Governmental units serving as nonbank trustee of individual retirement accounts; cross-reference; comments due by 10-20-04; published 7-22-04 [FR 04-16595]
Optional 10-year writeoff of certain tax preferences; comments due by 10-18-04; published 7-20-04 [FR 04-16474]
Partnerships and their partners; qualified small business stock sale; grain deferral; hearing date correction; comments due by 10-19-04; published 9-2-04 [FR 04-20056]
Procedure and administration:
Entity classification changes; eligible associations taxable as a corporation for qualified electing S corporation; comments due by 10-18-04; published 7-20-04 [FR 04-16233]

TREASURY DEPARTMENT
Thrift Supervision Office
Economic Growth and Regulatory Paperwork Reduction Act of 1996; implementation:
Burden reduction recommendations; comments due by 10-18-04; published 7-20-04 [FR 04-16401]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 1308/P.L. 108–311
Working Families Tax Relief Act of 2004 (Oct. 4, 2004; 118 Stat. 1166)

H.R. 265/P.L. 108–312
Mount Rainier National Park Boundary Adjustment Act of 2004 (Oct. 5, 2004; 118 Stat. 1194)

H.R. 1521/P.L. 108–313
Johnstown Flood National Memorial Boundary Adjustment Act of 2004 (Oct. 5, 2004; 118 Stat. 1196)

H.R. 1616/P.L. 108–314
Martin Luther King, Junior, National Historic Site Land Exchange Act (Oct. 5, 2004; 118 Stat. 1198)

H.R. 1648/P.L. 108–315
Carpinteria and Montecito Water Distribution Systems Conveyance Act of 2004 (Oct. 5, 2004; 118 Stat. 1200)

H.R. 1732/P.L. 108–316
To amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Williamson County, Texas, Water Recycling and Reuse Project, and for other purposes. (Oct. 5, 2004; 118 Stat. 1202)

H.R. 2696/P.L. 108–317
Southwest Forest Health and Wildfire Prevention Act of 2004 (Oct. 5, 2004; 118 Stat. 1204)

H.R. 3209/P.L. 108–318
To amend the Reclamation Project Authorization Act of 1972 to clarify the acreage for which the North Loup division is authorized to provide irrigation water under the Missouri River Basin project. (Oct. 5, 2004; 118 Stat. 1211)

H.R. 3249/P.L. 108–319

To extend the term of the Forest Counties Payments Committee. (Oct. 5, 2004; 118 Stat. 1212)

H.R. 3389/P.L. 108–320

To amend the Stevenson-Wydler Technology Innovation Act of 1980 to permit Malcolm Baldrige National Quality Awards to be made to nonprofit organizations. (Oct. 5, 2004; 118 Stat. 1213)

H.R. 3768/P.L. 108–321

Timucuan Ecological and Historic Preserve Boundary Revision Act of 2004 (Oct. 5, 2004; 118 Stat. 1214)

S.J. Res. 41/P.L. 108–322

Commemorating the opening of the National Museum of the American Indian. (Oct. 5, 2004; 118 Stat. 1216)

H.R. 4654/P.L. 108–323

To reauthorize the Tropical Forest Conservation Act of 1998 through fiscal year 2007, and for other purposes. (Oct. 6, 2004; 118 Stat. 1218)

Last List October 6, 2004

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–052–00001–9)	9.00	[4]Jan. 1, 2004
3 (2003 Compilation and Parts 100 and 101)	(869–052–00002–7)	35.00	[1] Jan. 1, 2004
4	(869–052–00003–5)	10.00	Jan. 1, 2004
5 Parts:			
1–699	(869–052–00004–3)	60.00	Jan. 1, 2004
700–1199	(869–052–00005–1)	50.00	Jan. 1, 2004
1200–End	(869–052–00006–0)	61.00	Jan. 1, 2004
6	(869–052–00007–8)	10.50	Jan. 1, 2004
7 Parts:			
1–26	(869–052–00008–6)	44.00	Jan. 1, 2004
27–52	(869–052–00009–4)	49.00	Jan. 1, 2004
53–209	(869–052–00010–8)	37.00	Jan. 1, 2004
210–299	(869–052–00011–6)	62.00	Jan. 1, 2004
300–399	(869–052–00012–4)	46.00	Jan. 1, 2004
400–699	(869–052–00013–2)	42.00	Jan. 1, 2004
700–899	(869–052–00014–1)	43.00	Jan. 1, 2004
900–999	(869–052–00015–9)	60.00	Jan. 1, 2004
1000–1199	(869–052–00016–7)	22.00	Jan. 1, 2004
1200–1599	(869–052–00017–5)	61.00	Jan. 1, 2004
1600–1899	(869–052–00018–3)	64.00	Jan. 1, 2004
1900–1939	(869–052–00019–1)	31.00	Jan. 1, 2004
1940–1949	(869–052–00020–5)	50.00	Jan. 1, 2004
1950–1999	(869–052–00021–3)	46.00	Jan. 1, 2004
2000–End	(869–052–00022–1)	50.00	Jan. 1, 2004
8	(869–052–00023–0)	63.00	Jan. 1, 2004
9 Parts:			
1–199	(869–052–00024–8)	61.00	Jan. 1, 2004
200–End	(869–052–00025–6)	58.00	Jan. 1, 2004
10 Parts:			
1–50	(869–052–00026–4)	61.00	Jan. 1, 2004
51–199	(869–052–00027–2)	58.00	Jan. 1, 2004
200–499	(869–052–00028–1)	46.00	Jan. 1, 2004
500–End	(869–052–00029–9)	62.00	Jan. 1, 2004
11	(869–052–00030–2)	41.00	Feb. 3, 2004
12 Parts:			
1–199	(869–052–00031–1)	34.00	Jan. 1, 2004
200–219	(869–052–00032–9)	37.00	Jan. 1, 2004
220–299	(869–052–00033–7)	61.00	Jan. 1, 2004
300–499	(869–052–00034–5)	47.00	Jan. 1, 2004
500–599	(869–052–00035–3)	39.00	Jan. 1, 2004
600–899	(869–052–00036–1)	56.00	Jan. 1, 2004
900–End	(869–052–00037–0)	50.00	Jan. 1, 2004
13	(869–052–00038–8)	55.00	Jan. 1, 2004
14 Parts:			
1–59	(869–052–00039–6)	63.00	Jan. 1, 2004
60–139	(869–052–00040–0)	61.00	Jan. 1, 2004
140–199	(869–052–00041–8)	30.00	Jan. 1, 2004
200–1199	(869–052–00042–6)	50.00	Jan. 1, 2004
1200–End	(869–052–00043–4)	45.00	Jan. 1, 2004
15 Parts:			
0–299	(869–052–00044–2)	40.00	Jan. 1, 2004
300–799	(869–052–00045–1)	60.00	Jan. 1, 2004
800–End	(869–052–00046–9)	42.00	Jan. 1, 2004
16 Parts:			
0–999	(869–052–00047–7)	50.00	Jan. 1, 2004
1000–End	(869–052–00048–5)	60.00	Jan. 1, 2004
17 Parts:			
1–199	(869–052–00050–7)	50.00	Apr. 1, 2004
200–239	(869–052–00051–5)	58.00	Apr. 1, 2004
240–End	(869–052–00052–3)	62.00	Apr. 1, 2004
18 Parts:			
1–399	(869–052–00053–1)	62.00	Apr. 1, 2004
400–End	(869–052–00054–0)	26.00	Apr. 1, 2004
19 Parts:			
1–140	(869–052–00055–8)	61.00	Apr. 1, 2004
141–199	(869–052–00056–6)	58.00	Apr. 1, 2004
200–End	(869–052–00057–4)	31.00	Apr. 1, 2004
20 Parts:			
1–399	(869–052–00058–2)	50.00	Apr. 1, 2004
400–499	(869–052–00059–1)	64.00	Apr. 1, 2004
500–End	(869–052–00060–9)	63.00	Apr. 1, 2004
21 Parts:			
1–99	(869–052–00061–2)	42.00	Apr. 1, 2004
100–169	(869–052–00062–1)	49.00	Apr. 1, 2004
170–199	(869–052–00063–9)	50.00	Apr. 1, 2004
200–299	(869–052–00064–7)	17.00	Apr. 1, 2004
300–499	(869–052–00065–5)	31.00	Apr. 1, 2004
500–599	(869–052–00066–3)	47.00	Apr. 1, 2004
600–799	(869–052–00067–1)	15.00	Apr. 1, 2004
800–1299	(869–052–00068–0)	58.00	Apr. 1, 2004
1300–End	(869–052–00069–8)	24.00	Apr. 1, 2004
22 Parts:			
1–299	(869–052–00070–1)	63.00	Apr. 1, 2004
300–End	(869–052–00071–0)	45.00	Apr. 1, 2004
23	(869–052–00072–8)	45.00	Apr. 1, 2004
24 Parts:			
0–199	(869–052–00073–6)	60.00	Apr. 1, 2004
200–499	(869–052–00074–4)	50.00	Apr. 1, 2004
500–699	(869–052–00075–2)	30.00	Apr. 1, 2004
700–1699	(869–052–00076–1)	61.00	Apr. 1, 2004
1700–End	(869–052–00077–9)	30.00	Apr. 1, 2004
25	(869–052–00078–7)	63.00	Apr. 1, 2004
26 Parts:			
§§ 1.0–1–1.60	(869–052–00079–5)	49.00	Apr. 1, 2004
§§ 1.61–1.169	(869–052–00080–9)	63.00	Apr. 1, 2004
§§ 1.170–1.300	(869–052–00081–7)	60.00	Apr. 1, 2004
§§ 1.301–1.400	(869–052–00082–5)	46.00	Apr. 1, 2004
§§ 1.401–1.440	(869–052–00083–3)	62.00	Apr. 1, 2004
§§ 1.441–1.500	(869–052–00084–1)	57.00	Apr. 1, 2004
§§ 1.501–1.640	(869–052–00085–0)	49.00	Apr. 1, 2004
§§ 1.641–1.850	(869–052–00086–8)	60.00	Apr. 1, 2004
§§ 1.851–1.907	(869–052–00087–6)	61.00	Apr. 1, 2004
§§ 1.908–1.1000	(869–052–00088–4)	60.00	Apr. 1, 2004
§§ 1.1001–1.1400	(869–052–00089–2)	61.00	Apr. 1, 2004
§§ 1.1401–1.1503–2A	(869–052–00090–6)	55.00	Apr. 1, 2004
§§ 1.1551–End	(869–052–00091–4)	55.00	Apr. 1, 2004
2–29	(869–052–00092–2)	60.00	Apr. 1, 2004
30–39	(869–052–00093–1)	41.00	Apr. 1, 2004
40–49	(869–052–00094–9)	28.00	Apr. 1, 2004
50–299	(869–052–00095–7)	41.00	Apr. 1, 2004
300–499	(869–052–00096–5)	61.00	Apr. 1, 2004

Title	Stock Number	Price	Revision Date
500–599	(869–052–00097–3)	12.00	[5]Apr. 1, 2004
600–End	(869–052–00098–1)	17.00	Apr. 1, 2004
27 Parts:			
1–199	(869–052–00099–0)	64.00	Apr. 1, 2004
200–End	(869–052–00100–7)	21.00	Apr. 1, 2004
28 Parts:			
0–42	(869–052–00101–5)	61.00	July 1, 2004
*43–End	(869–052–00102–3)	60.00	July 1, 2004
29 Parts:			
0–99	(869–052–00103–1)	50.00	July 1, 2004
100–499	(869–052–00104–0)	23.00	July 1, 2004
500–899	(869–052–00105–8)	61.00	July 1, 2004
900–1899	(869–052–00106–6)	36.00	July 1, 2004
1900–1910 (§§ 1900 to 1910.999)	(869–052–00107–4)	61.00	July 1, 2004
1910 (§§ 1910.1000 to end)	(869–052–00108–2)	46.00	[8]July 1, 2004
1911–1925	(869–052–00109–1)	30.00	July 1, 2004
1926	(869–052–00110–4)	50.00	July 1, 2004
1927–End	(869–052–00111–2)	62.00	July 1, 2004
30 Parts:			
1–199	(869–052–00112–1)	57.00	July 1, 2004
200–699	(869–052–00113–9)	50.00	July 1, 2004
700–End	(869–052–00114–7)	58.00	July 1, 2004
31 Parts:			
*0–199	(869–052–00115–5)	41.00	July 1, 2004
200–End	(869–052–00116–3)	65.00	July 1, 2004
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
*1–190	(869–052–00117–1)	61.00	July 1, 2004
191–399	(869–052–00118–0)	63.00	July 1, 2004
400–629	(869–052–00119–8)	50.00	[8]July 1, 2004
630–699	(869–052–00120–1)	37.00	[7]July 1, 2004
700–799	(869–052–00121–0)	46.00	July 1, 2004
800–End	(869–052–00122–8)	47.00	July 1, 2004
33 Parts:			
1–124	(869–050–00122–5)	55.00	July 1, 2003
125–199	(869–050–00123–3)	61.00	July 1, 2003
200–End	(869–052–00125–2)	57.00	July 1, 2004
34 Parts:			
1–299	(869–050–00125–0)	49.00	July 1, 2003
300–399	(869–052–00127–9)	40.00	July 1, 2004
400–End	(869–052–00128–7)	61.00	July 1, 2004
35	(869–052–00129–5)	10.00	[6]July 1, 2004
36 Parts			
1–199	(869–052–00130–9)	37.00	July 1, 2004
200–299	(869–052–00131–7)	37.00	July 1, 2004
300–End	(869–050–00131–4)	61.00	July 1, 2003
37	(869–050–00132–2)	50.00	July 1, 2003
38 Parts:			
0–17	(869–052–00134–1)	60.00	July 1, 2004
*18–End	(869–052–00135–0)	62.00	July 1, 2004
***39**	(869–052–00136–8)	42.00	July 1, 2004
40 Parts:			
*1–49	(869–052–00137–6)	60.00	July 1, 2004
50–51	(869–052–00138–4)	45.00	July 1, 2004
52 (52.01–52.1018)	(869–050–00138–1)	58.00	July 1, 2003
52 (52.1019–End)	(869–050–00139–0)	61.00	July 1, 2003
53–59	(869–052–00141–4)	31.00	July 1, 2004
60 (60.1–End)	(869–050–00141–1)	58.00	July 1, 2003
60 (Apps)	(869–050–00142–0)	51.00	[8]July 1, 2003
61–62	(869–050–00143–8)	43.00	July 1, 2003
63 (63.1–63.599)	(869–050–00144–6)	58.00	July 1, 2003
63 (63.600–63.1199)	(869–052–00146–5)	50.00	July 1, 2004
63 (63.1200–63.1439)	(869–050–00146–2)	50.00	July 1, 2003
63 (63.1440–End)	(869–050–00147–1)	64.00	July 1, 2003
*64–71	(869–052–00150–3)	29.00	July 1, 2004
72–80	(869–052–00151–1)	62.00	July 1, 2004
81–85	(869–052–00152–0)	60.00	July 1, 2004
*86 (86.1–86.599–99)	(869–052–00153–8)	58.00	July 1, 2004
*86 (86.600–1–End)	(869–052–00154–6)	50.00	July 1, 2004
87–99	(869–052–00155–4)	60.00	July 1, 2004
100–135	(869–050–00154–3)	43.00	July 1, 2003
136–149	(869–150–00155–1)	61.00	July 1, 2003
150–189	(869–050–00156–0)	49.00	July 1, 2003
190–259	(869–050–00157–8)	39.00	July 1, 2003
260–265	(869–052–00160–1)	50.00	July 1, 2004
*266–299	(869–052–00161–9)	50.00	July 1, 2004
*300–399	(869–052–00162–7)	42.00	July 1, 2004
400–424	(869–052–00163–5)	56.00	[8]July 1, 2004
*425–699	(869–052–00164–3)	61.00	July 1, 2004
700–789	(869–052–00165–1)	61.00	July 1, 2004
790–End	(869–050–00164–1)	58.00	July 1, 2003
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–052–00167–8)	24.00	July 1, 2004
101	(869–052–00168–6)	21.00	July 1, 2004
102–200	(869–050–00167–5)	50.00	July 1, 2003
201–End	(869–052–00170–8)	24.00	July 1, 2004
42 Parts:			
1–399	(869–050–00169–1)	60.00	Oct. 1, 2003
400–429	(869–050–00170–5)	62.00	Oct. 1, 2003
430–End	(869–050–00171–3)	64.00	Oct. 1, 2003
43 Parts:			
1–999	(869–050–00172–1)	55.00	Oct. 1, 2003
1000–end	(869–050–00173–0)	62.00	Oct. 1, 2003
44	(869–050–00174–8)	50.00	Oct. 1, 2003
45 Parts:			
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500–1199	(869–050–00177–2)	50.00	Oct. 1, 2003
1200–End	(869–050–00178–1)	60.00	Oct. 1, 2003
46 Parts:			
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70–89	(869–050–00181–1)	14.00	Oct. 1, 2003
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47 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.